Common Property and Common Poverty

India's Forests, Forest Dwellers and the Law

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Acknowledgements

This work is the outcome of a perceived shortcoming which needs urgent attention. In my deliberations on forest issues in academic discussions, co-participants have often demanded information on the rights of forest dwellers in India and the claims that can be made on their behalf. Since the issues are complex and since there is no detailed critical literature on the subject that can function as a primary source from which to begin reflection, I have tried to make a beginning, however incomplete. But in beginning from the very beginning the investigation has required not only a putting together of the various socio-eco-politico-legal issues to exhibit their interdependence, but also the generation of a radical critique which will relate forest issues to the more general and basic issues of distributive justice pertaining to property relationships amongst Indians.

This pamphlet is a by-product of a larger work on common property resources in which I am presently engaged. I am obliged to Ms Pawan Prinja, Mr Sunil Kumar, Ms Rita Wadhwa, Ms Shobha Aggarwal and Dr Geeta Kartarya, who have been assisting me on the common property resources project, the labour on which has made this work feasible. Dr M. P. Singh and Mr B. B. Pande of the Law Faculty, University of Delhi, read an earlier version of this work. Their suggestions have been very helpful in improving some arguments and avoiding some errors, and their help through discussions has been invaluable. Thanks are also due to Mr Yash Pal Sharma, Assistant at the Indian Law Institute, for typing out the script despite my ramblings.

Preface

The welfare of any nation is directly related to the management and productivity of environmental systems. As population and demands grow land-use patterns change, the regulatory mechanisms that earlier maintained a balance between man and nature begin to break down and the prudent use of recoverable resources can no longer be effectively asserted. It is of critical importance, hence, that management systems be designed so that renewable resources such as trees, shrubs, pasture, soil, water and wild life be restored and utilized on a sustained-yield basis.

But the central question in any welfare economics is: utilization for whom? An economic management scheme that portrays a Pareto Efficient Demand-Yield model for renewable resources, or that proclaims an equilibrium state in the utilization of such resources but results in an unfair distribution of benefits, is clearly only apparently efficient or at equilibrium. Disparity in wealth has always led to social disruptions which prove to be economically disfunctional in the long run. Moreover, the results of such a scheme cannot truly be a 'welfare' model for the nation—which must include everyone—it can only be a welfare scheme for some. It must be realized that any new economic plan will necessarily alter the existing allocation and utilization of resources. Within a democratic system this can be done only by altering the ownership and user rights of people. This assumes that welfare schemes are well-informed of the existing rights of the people who are to be affected. But have our economic plans been so informed of people's rights?

Discussions on people's rights are commonplace in national and international academics these days. One would therefore assume that there is a substantive literature on the rights of forest dwellers in India, since this is vital to any economic plan concerning forests. Surprisingly, the opposite is true. In terms of basic arguments the last serious discussion occurred almost a century back, between

Brandis, Baden-Powell and the forest officers. Although much has been said about the rights of tribals since then, there does not exist any single work which goes into the legal depths of the issues involved. Hence, before beginning a larger work on the role of law in the management of natural resources, it became important for me to determine for myself the exact legal position concerning the present rights of forest dwellers and to ascertain what can be done for them in future litigation.

One reason why the subject of the rights of forest dwellers has received little attention from jurists seems to be the belief that such rights were abolished by the British a long time ago, and hence to pursue this issue would be to flog a dead horse. Such a belief can arise only by ignorance of past and present laws. The British themselves took almost a century to diminish the rights of forest dwellers, and even then did not fully succeed. Although occupancy rights were abolished in the plains, there still exist a large number of exercise and user rights which are in need of serious attention. Moreover, the numerous contradictions in our laws still provide a living space to ressurect occupancy rights, even in the plains. These have to be carefully analysed and understood. The degrees to which rights were diminished depended upon the political and ethnic distances between the British Raj and the native communities. Thus, in the hills in the east—such as in Mizoram, Meghalaya, Tripura and Assam, where these political and ethnic distances were great—it was not possible to abolish *all* rights in land. In the plains this was feasible to a larger degree. The situation concerning rights varies in different states. It is not necessary to document all these variations since they are specified in the state laws. It is more significant to document and analyse the *reasons* for these numerous variations. Here one finds similarities that can be identified and evaluated.

The other reason why this subject has received insignificant attention is that whereas environmentalists perceive forest laws as relating to 'environmental' (deforestation and aforestation) problems, economists conceive such laws only in relation to resource-management problems. Both perceptions leave out the people who dwell in forests. Such myopic perceptions are at best selective abstractions which only aid the comprehension of some issues. Thus, for example, we have Partha Dasgupta telling us how

to 'control' natural resources on the basis of a neo-classical economic model (*The Control of Resources*, Oxford, 1982). His models leave out the fact that when we really get down to 'controlling' natural resources there are forest dwellers who will be affected and who will make demands which ought to be considered. On the other hand we have sociologists—such as André Béteille who explains with great clarity the conditions of inequality of tribals in *Inequality and Social Change* (Oxford, 1972). Béteille's analysis aids comprehension; but in attempting to *alter* dimensions of inequality we are at once confronted with the rigid grid of laws which perpetuates inequalities. Béteille's analysis does not attempt to affect change since it does not confront the social consciousness embodied in the inequality-generating rules which sanction coercion. From the legal perspective we have Mark Galanter's forceful account of how 'competing equalities' between tribals and others find their rationale in legislations relating to affirmative actions. (*Competing Equalities*, Oxford, 1984). But having understood the rationale for affirmative action, how is one to proceed to ensure that conditions of inequality do not continue to exist? Clearly by delimiting the conditions which lead to inequality in the first place. Galanter is not addressing himself to this question. But if inequality is really to be removed and equalities are really to compete, one cannot escape confronting the issue related to inequality-generating conditions. The issues are nothing but those concerning the rights of the tribals to their lands and its resources.

I am not suggesting an interdisciplinary approach because, in any proper analysis concerning rights, disciplines are already intricately connected. I am emphasizing that any economic proposal for development is grossly inadequate if it does not take into account legal sanctions and the legal rationale that regulates the existing situation. Development schemes must be based on the existing legal apportionment of rights. Models for land and agriculture reforms have usually neglected the existing legal situation pertaining to land holdings. In application, therefore, they have been futile. Improvements, where they have occurred, have been for reasons other than those sought in the models. One has only to see the records of the Land Reforms Commission to appreciate the legal difficulties faced in the implementation of its proposals. In some areas the rights over land go back to records as old as the Mughal period; moreover, the records as well as the legal proce-

dure for acquisition are extremely complicated. In a large way the Land Reform measures failed because they were blind to these legal realities at the stage of the formation of proposals.

The issue of rights is not limited in relevance to economic plans only. Any legal account of competing equalities will be ineffective in generating operative principles if it does not take into account other laws which create inequalities. Alternatively, any sociological account of inequality will be operationally barren if it neglects the laws constitutive of the inequality situation. The lesson must be driven home therefore that any economic policy for the management of forest resources or any environmental policy for the protection of such resources will be unrealistic if it does not already include, in the plan, considerations of the legal framework of rights and the beneficiaries of such rights. The recent legal difficulties faced by the Department of Environment in attempting to create new reserves or 'biospheres' is a case in point. The a priori plans evidently did not build into themselves solutions to the problems existing in the legal situation concerning people's rights in lands. The social forestry programme is even better illustrative of such shortcomings: it benefits only those whom it was never intended to benefit. Clearly, the rights of those who were intended to be benefited by this programme were not first considered—in terms of whether the rights made such benefits possible.

Since the issue of rights is relevant from various perspectives I am hopeful that this work will be of use to economists, political scientists, sociologists and activists in the field, although it has been directed primarily towards lawyers and jurists. The legal characteristics of the work will need some clarification.

The layman's view of law is one of determinism, where it is assumed that rules need to be mechanically fitted to cases. Either people follow rules or do not follow them, or rules simply exist or do not exist. But those within the system know that law is not like this at all. It is actually a process within which what exists and what does not is never wholly predetermined. There is a large legal space within which interpretation and the invocation of fundamental principles of justice provide fertile ground for creativity—for the possibility of creating a more just society even when legislations to that effect do not exist. This is specially true of Indian law, despite its numerous shortcomings, for Indian laws are a labyrinth of contra-

dictory ideologies existing simultaneously. Forest laws are essentially colonial and capitalistic in nature. The Directive Principles which amongst other things also relate to common property resources are, however, socialistic in orientation. Between these two is sandwiched a liberal ideology embodied in the Fundamental Rights. To add to the confusion there is a whole range of case laws ranging from anarchic neo-colonialism to utopian socialism. Logic tells us that from contradictions one may derive any proposition, both true and false, valid or invalid. This truth of logic is fortuitous for Indian laws because it demonstrates that, given sufficient ingenuity, the country's jurists can protect their laws in favour of justice; there is sufficient elasticity to interpret them in ways leading to fairness. But it also demonstrates that the very fluidity can spell disaster for these laws; it can allow vested interests to alter them in favour of injustice.

Such a characterization of Indian laws implies a major responsibility for jurists. It implies that laws need to be saved and protected just as much as forests need to be protected. My work attempts to show that protection at both levels must occur simultaneously. Forests can be protected only by protecting just laws. Amendments to unjust forest laws do not necessarily depend upon acts of parliament, although no doubt they can be changed more categorically through such acts. One does not have to wait for political revolutions reflected in new acts or bills in parliament. Major changes towards justice can be brought about, as this work attempts to demonstrate, by minor changes of interpretation in legal judgments. Hence, if the necessary changes are not brought about lawyers and judges cannot absolve themselves of the responsibility for injustice and blame this on legislators.

It is legitimate to ask at this point—even if one grants my argument that forests can be protected only by protecting forest dwellers—how optimistic can one be in believing that people will actually care about protecting what remains of the forest, or in believing that vested interests bent upon destroying forests can be won over? History cannot be foretold, but it can be made by *realizing* (making real) the rights of forest dwellers. In realizing these rights, entitlements to compensation as well as to the benefits from the gained resources will go up many fold. Hence, even if the destruction of forests continues, a much greater part of the resulting income will go back to the native dwellers than has

hitherto. The realization of rights, thus, is the *sine qua non* for the realization of distributive justice.

Affecting a more just distribution of wealth by recognizing the rights of forest dwellers is no meagre gain because about seven per cent of all Indians are forest dwellers or tribals: this means more than forty million people. The very magnitude of what is at stake should be reason enough to persuade people to take the issue seriously.

Since I am writing on a topic which is central to the management of common property resources and which is also a focal point in the history of political economics, readers may tend to contrast what I say here with Marx's 'Laws on the Theft of Woods'. The foregoing remarks on the nature of Indian laws may already suggest some basic differences in my approach from that of Marx. In my view the so called 'left' and the so called 'right' are not really opposed to each other since they are addressing totally different problems. This is not the occasion to explain such matters, however, and I would refer interested readers to my *Law from Anarchy to Utopia* (Oxford, 1985). But I mention this to forestall prejudgements on the ideological bias of the arguments herein. What I am saying is in complete accord neither with the Left nor the Right, but with my own view on the nature of law, described in detail in the text mentioned. I believe that there are universal basic principles of law which are independent of class ideologies but which while evolving must none the less find expression in them. Such principles are discoverable and applicable in co-operative reasoning and action. The Indian Forest Act represents a point in the dialectics which is neither discoverable nor applicable in this manner. Hence, strictly it lacks all the characteristics of law. It is merely a decree by political fiat being passed off as a law within a political system that permits this. I shall limit my indulgence in philosophy of law to these remarks, since it is not necessary for a comprehension of this work.

A few words about the nature of the arguments, the architectonics and scope of this work. Any law or policy, or any human creation for that matter, can be criticized in two ways: internally, in terms of its own worth, and externally, in terms of the worthiness of the motives and reasons that led to that creation. Although the two types of criticisms are complementary, one cannot be a substitute for the other. This simple point, however, is not always

obvious to many critics. Thus, for example, Charles A. Beard demonstrated that the drafters of the American Constitution were members of the propertied class who desired to perpetuate many of their own class values within the framework of the new government (*An Economic Interpretation of the Constitution*, Macmillan, 1913). Someone may demonstrate this with equal veracity for the Indian Constitution as well. The tacit assertion in such external criticisms, usually from the Left, however, is that in showing certain specific class values to have been perpetuated one has also, *ipso facto*, shown the internal unworthiness of the values. Such an assumption is grossly mistaken. Little reflection is required to understand that the internal worth of an action, principle or thing is one thing, and the worthiness of the reasons or causes that led to it is another.

To show the worthiness or otherwise of the Indian Constitution would require an appeal to principles of justice, i.e. an internal criticism. What is true about the Constitution is also true about any law, including forest laws. To demonstrate the true unworthiness of forest laws it would not suffice to draw attention to the exploitative ways in which they were brought about, the selfish economic motives that have backed them, etc. There is no conceptual or logical inconsistency in wanting to argue that despite such motives the existing forest laws are the best instruments for realizing distributive justice in the long run. To demonstrate the unworthiness of existing forest laws—which is part of the task herein, I have not, therefore, merely narrated a long tale of exploitation, nor framed my arguments in terms of changes in modes of production in the usual Marxist style. Valuable as such descriptions of reasons and motives are in their own right, I only mention them here and there to illustrate points. A true criticism of the forest laws has, finally, to be internal. It has to be met on its own grounds, by an appeal to principles of distributive justice, what constitutes good reason, proper utility, and notions of just national development.

This work includes an appendix of the relevant laws which are discussed in the text. This is done for two reasons: first, because it may be useful to those actively engaged in litigation or wanting to be so engaged; second, by scrutinizing the laws independently the reader may notice implications which may have escaped my attention.

The first chapter is not about forest issues alone: it is a general

introduction to the issues concerning common property resources so that those pertaining to forests specifically can be perceived in a wider and more basic context. It is my belief that unless solutions to problems of distributive justice are sought in the wider context of property relations amongst Indians, the forest problem will never be solved. I am hopeful that this investigation will be a useful step in the pursuit of justice.

I. Property and Poverty

It is common knowledge that India is facing an environmental crisis. But what precisely is the crisis? Experts tell us it means the denudation of forests and the increase in waste land and pollution; so they and the state order the planting of trees, the cleaning up of rivers and the creation of new administrative infrastructures to achieve these ends. But do these measures really address themselves to the true crisis? Who has paused to reflect on the basic causes that have led to such massive deforestation and pollution? If the causes still persist, to what end is all this afforestation and purification directed? Will not new forests be hacked away again, and will not clean rivers be polluted sooner or later again? Deforestation and the increase in waste land and pollution are *effects*; the real need is to identify the *causes*.

Prakriti or nature is a living organic force, like man. It is a self-regulating, self-healing organism—so long as externalities do not disturb or destroy it. Amongst these externalities the most destructive is injustice or *adharma*. For the past two centuries or so the consequences of such *adharma* have been borne by the rural poor, the tribals, and the flora and fauna in India. The rich have only now begun to make a noise because the causal chain of this *adharma* has now begun to affect their own lives.

The natural world is meant to be shared by all, whereas we have divided up its resources in terms of 'property' on the basis of needs, customs and laws, as well as by mere fiat and force. Property can be classified into two generic types: private and common. Within private property, only an individual and his family have legal rights to the benefits arising from its resources and capital. Within common property, access and utility are not limited to an individual and his family but are shared commonly by many people. Common property can be further classified as being of two distinct types: that which is the product of organized human labour, and that which is the product of nature's labour. In the former type feature public transport, entertainment places, service offices, hospitals, etc. etc. These things are now generally called 'public

property'. In the latter class fall natural forests, ponds, lakes, rivers and streams, ores, mineral fuels, sand, mud, limestone, and other types of stones and salts. All such common property yields natural resources. The term 'natural resources' is often mistakenly applied to minerals and oils only, but fish, wood, birds, mud, wild grass, salts and various other objects are as much natural resources as minerals. In terms of their consumption such resources are as economically significant as minerals and oils.

Now, if one looks at land records, agrarian records, records of the Forest Department (from around 1865 onwards), as well as literary sources, it is evident that till the end of the last century and in all historical periods before that at least 80 per cent of India's natural resources were common property, with only about 20 per cent being privately utilized. Given the uncertainty of records, even a ratio of 90:10 for common versus private property would not be an unlikely estimate. Records on common property are of course difficult to find, but their extent and type can be deduced from the knowledge of the overall geography of India and records of private holdings.

This extensive common property has provided the resource base for a non-cash, non-market economy. A whole range of necessary resources has been freely available to the people. Thus, commonly available wood, shrubs and cowdung has been utilized for cooking and heating; mud, bamboo and palm leaves for housing; wild grass and shrubs as animal fodder; and a variety of fruits and vegetables as food. There has been, thus, only a minimal cost for the basic energy, food and housing resources. The only costs involved have been personal labour and transportation. Even today most rural Indians depend upon common property resources for their energy and housing needs, and in some ways also for their food requirements. The dependency on free common property resources is the greatest in tribal areas, somewhat less in rural areas, and least in urban areas. The inhabitants of rural and tribal areas, however, form the majority of the Indian population.

Around 1865 and thereafter the British began the process of the privatization of common property resources. They did this by creating numerous permanent settlements on common property lands, declaring many areas 'reserved forests', 'protected forests' and 'revenue land'. After Independence Indians not only accepted

these classifications but also attempted to enforce them with greater zeal.

The laws enacted by the British—many are still in force today—which realized total control over common property resources never mentioned 'reserved' for whom, 'protected' against whom, and in favour of whom; nor do the 'revenue' land laws mention who the beneficiaries of revenue are going to be. Why is this so? The answer is evident if we take note of the manner in which the use of common property resources has drastically changed amongst various classes in the past, and in this century. The British had a straightforward purpose in declaring certain land, which generated wealth for the local people, as 'revenue' land. What was intended can be inferred from what was achieved—the purpose was to declare wealth available to the local people as 'revenue' available solely to the Crown. By this means was achieved a massive usurpation and transportation of forest resources to Europe during the First and Second World Wars, and a less substantial but equally significant export during the non-War period. Prior to the colonial period, benefits from common property resources were widely and fairly equitably distributed. But in the present neo-colonial situation, after Independence, the distribution is clearly skewed: the major beneficiaries and consumers are now the urban rich.

Although one may argue that underground natural resources such as minerals and oils cannot be acquired and utilized without an organized state (or private management) and a market economy to sustain the need for acquisition, such resources are not here being considered with respect to the economic situation of rural and tribal people. In fact this argument does not even apply to the types of resources which become more significant in their economic context. Rural and tribal people use neither oil nor coal as energy resources, nor do thay use iron or copper for their housing needs. What affects them directly is the usurpation of common natural resources *over* land, whether the usurpation is through state monopoly or through a private capitalist body. Such usurpation has been achieved through a complex network of Forest Acts, laws concerning minor forest produce, those governing other common lands, industrial and agrarian laws and policies, as well as those pertaining to common water resources.

The consequences of the legalized and *de facto* privatization of common property resources have been to turn the non-cash economy into a market economy, in other words the charging of a price for most primary resources which were free earlier. Indian rural people now pay a much higher price for their energy requirements than urban people. Wood and shrubs are sold to them at a higher price than to industries. Since wood has a much lower calorific value than gas, rural people end up spending a far greater amount of money in cooking an equivalent amount of food than urban gas users. Similarly, rural and tribal people end up spending a great deal of money on housing, the raw materials for which, till recent times, were free for them. The situation with food resources is similar.

The basic reason for rural and tribal poverty, therefore, is nothing but the privatization of common property resources in a non-equitable manner. After Independence the government has put forward numerous plans for the removal of poverty. But all such economic plans have concerned themselves only with *private* property in land. The government has attempted to increase the purchasing power of the poor through land reforms, and by providing agrarian inputs, loans, etc. But none of the Five Year Plans, 20 Point Programmes, and various other 'development' plans, takes into account the natural common resources which were available as free wealth. By rapidly increasing the prices of common resources the government, the industrialists and the urban rich are taking away from rural and tribal people much more than they are giving them through aids, loans and land reforms. The proof is in the fact that rural poverty and disparity in wealth have increased in actual monetary terms, not merely in terms of the number of poor people.

It may be argued that state monopoly over common property resources does not constitute privatization. This would be true if state ownership made the resources commonly available to many people, including of course to those who were already utilizing the resources. But this is not how things are. The state monopolizes resources so that it can make these available to specific private industries. The state therefore becomes merely a medium through which the process of privatization is facilitated.

This inequitable privatization of common property resources in favour of some and the exclusion of many, then, is the *adharma* or

injustice which the British and subsequently the independent Indian government has perpetuated on rural and tribal India. This is also the basic cause which has led to massive deforestation, the creation of wastelands and other ecological problems. Therefore, unless we directly tackle issues concerning the inequitable distribution of common property resources and the benefits arising from them, environmental and ecological problems cannot be solved. In the competing market situation it is natural for industries to maximize their benefits, which in one instance means felling a far greater number of trees than contracted for. If the rate of industrial growth and its demands are to grow faster than trees, no afforestation programme at public cost is going to slow the rate of deforestation. On the other hand if the natural resources of rural and tribal people are to be usurped and no alternative made available to them, the courses of action for such people are few: they either steal, die of poverty, revolt, or are forced to migrate. The first option involves a continuous process of criminalization of people by the state. This is happening rapidly in many tribal and rural areas. With regard to the second 'option', no one is willing to die of poverty unless they cannot help it, and there are many who cannot. Those who can, often revolt, either in a non-violent way as in Chipko, or in a violent way as in Jharkhand. Where the dialectics of collective social organization and impact are missing, the alternative is for individuals to seek their own fortune (or misfortune)—this is what we witness in the mass migration of labourers from Bihar to Punjab. Another 'option' is to build genocide sectors in our economy, such that it is tacitly presupposed that the lives of some people have to be sacrificed for benefits to others. This too is part of our economic strategy. Bhopal is illustrative of this. The majority of the people who died of poison gas were the poor settled close to the Union Carbide factory. No one has bothered to investigate why they had to come there in the first place, nor where they came from. The scanty information that I have reveals that they came from nearby tribal and rural areas in Madhya Pradesh and Gujarat. And why? Because the common property resources which provided the primary needs for their livelihood were usurped, one by one. Bhopal is not in this sense an unexpected tragedy. It is really the culmination of a long series of tragedies spanning all the years over which people gave up hope of life in the village and moved to the uncertainties of a town. There

are other similar genocide sectors in our economic plans for 'national development'.

Issues concerning natural resources are panoramic. Underground and over-ground resources would need to be dealt with in different ways for an exhaustive analysis. It is not possible here to indulge in this wide range of issues. Therefore in this work I take up only the issues concerning one over-ground common property resource which I perceive to be basic, and consequently in need of immediate attention: namely issues pertaining to forests. I take these up solely from the point of view of equity. The problem of equity concerning forest resources is thus a particular case study relating to the general problems of common property resources.

II. Forests and People

The fact that the indiscriminate destruction of natural forests has brought about an environmental crisis is known to all those interested even marginally in India's flora and fauna. The evidence in numerous government and non-government reports as well as that made available by various people's movements, such as Chipko and Jharkand, is overwhelming.[1] But those who have gone deeper know that the crisis is not merely one of exploitative deforestation, but of the denudation of the very basis of the natural resource system which supports human life. The eco-system is self-regulating and interdependent; the destruction of one of its parts, such as the forest, affects all the other parts. Deforestation leads to a loss of top soil which, when washed away by rain, causes excessive sedimentation in rivers, affecting hydro-electric and irrigation projects. Such a loss also incapacitates the retention of rain water, as a consequence of which the underground water table rapidly falls. The magnitude of the problems which India presently faces hardly needs to be emphasized.[2] According to a governmental report from the Planning Commission, India may soon face an Ethiopian type of crisis for water.[3]

The key to the protection of the eco-system, hence, is the saving of natural forests as well as afforestation on a massive scale. But how is this to be done?

To begin with, it is important to note the peculiarity of India's natural forests. None of them have been uninhabited wildernes-

ses; they all have people domiciled in them. Therefore one cannot attempt to alter or protect natural forests in India without directly affecting people. Due to this peculiarity the forest problem can be (and has been) approached from two perspectives: first, from the point of view of how forest dwellers relate to the natural resources in their habitat and what sort of protection they require, and second, from the point of view of how natural resources in the forest relate to the people at large and what sorts of protection such resources are in need of. Those inclined ideologically to the left tend to take the former approach and those towards the right the latter.[4] But, as we shall see, these two approaches are not necessarily incompatible if the assumed developmental strategies are similar: i.e. if the first approach takes into account the long term developmental consequences which pertain to all the people, not just forest dwellers; and if the second approach seeks long term protection and the use of natural resources in such a way that the beneficiaries are also forest dwellers.

But before we plunge into this analysis it is necessary to outline the issues that are actually at stake in the forest question. There are three: (a) justice to the people, forest dwellers and non-dwellers; (b) justice to nature (trees, wild life, etc.); and (c) justice to coming generations, so that natural resources are available in the long run. In the course of enacting laws for the forest, or building administrative mechanisms to deal with them, we must settle our priorities with regard to these three issues.

Duties and rights can be ranked. Any sound moral or legal theory will demonstrate that our immediate obligation is more binding than our remote obligations. I am more obliged to protect and look after my own children than those of a stranger, and correspondingly my children have greater rights to my actions than those of others. This does not mean that I have no obligations to others or that such obligations are of an inferior quality; it is only a matter of ranking the priorities when simultaneous alternatives for action avail. Our obligation to existing people is immediate, while we are only remotely obliged to future generations. The former obligation is thus more binding than the latter. People also take priority over plants and animals, making it *relatively* more important to help the former.

The Forest Act, however, is not aimed at protecting forest dwellers as living beings amongst other living things. It is aimed only at

the utilization of living things and their products. Any future legal reform concerning forests must thus aim first of all at doing justice to the people, and only subsequently at doing justice to nature and future generations.

My insistence that forestry laws must first aim at doing justice to the people may make it seem that I am less interested in protecting flora and fauna. This is not so. I am just as anxious and worried about the protection of plants and wild life as other environmentalists. My insistence has its basis in the understanding that law is as interrelated as the parts of the eco-system. The only way in which flora and fauna can be protected is by protecting people. If the people are protected as well as made saviours of the forest, natural forests will be saved and justice to nature will have been done. The obligation to future generations follows from this because we would not have destroyed what is meant for all. Thus by setting our priorities right all three aspects of justice would be simultaneously accomplished.

Who do the people have to be saved from? They have to be saved from dishonest merchants, contractors, sub-contractors, industrialists and misguided or ill-informed government administration and policies. We shall consider in detail what types of laws can be instrumental in achieving such ends.

Having settled our priorities, the immediate issues are as follows:

1. What is the exact nature and extent of the rights that people have over forests, their resources and the benefits arising from them, in contemporary Indian law?
2. What ought to be the rights that they should have?
3. What criterion of justice must one use to determine the rights that ought to exist and evaluate those that do (if any).
4. Who will constitute 'the people' with such rights? What is the position in the present law?
5. What legal remedies do the people have, and ought to have, when their claims to such rights are not met?

These questions are basic, they pertain to the existing legal situation as well as what ought to be the case. They are so basic that they pertain not just to the Forest Act but to some fundamental issues of the Indian Constitution. As we shall see, the

Forest Act cannot be amended without calling into question the legal principles of government power (eminent domain), land acquisition and compensation. These are basic constitutional issues. Unless we are ready to tackle them openly the problems that the forest has raised (from the point of view of the people) in India can never be truly solved. The vastness and gravity of the problems posed by the destruction of our environment have gone far beyond the confines of the Forest Act—they call for some fundamental constitutional reforms.

In what follows I shall first state the legal position as it stands in Indian law, together with its historical antecedents, and then go on to discuss its socio-political aspects. This will also necessitate taking into account the jurisprudence concerning rights that has evolved in common law in other countries.

III. Rights in Common

Rights extend over the ownership of property or its use. What sort of property are forests? As noted, in common law property can be of two types, private and common. The latter can be further subdivided into common property of ancient origin, such as communal lands, and common property of modern origin, which comprises public services and places administered by the state. Forests come mostly under common property of ancient origin. Panchayat land, grazing land owned commonly by the village, and coast land, are some other examples of common property of ancient origin.

In the strict sense forest dwellers have traditionally not cognized their habitat as their *property*, common or private, since such a legal title did not exist in their world view. They perceived it as merely being in their possession. None the less the rulers within whose domain the land fell claimed ownership over such forests, even when they did not collect revenue from the native people or interfere with their lives in any manner.[5] The British made use of this fact of monarchical claim over land to introduce the institution of common property over which the sovereign has absolute rights. This was justified in legal theory in the name of a new 'act of the state' jurisprudence, about which we shall learn more subsequently. Having introduced this, the first legislation—Bengal Regulation I of 1824—was enacted. This allowed the acquisition of land

by the crown. The provision of this Act was extended to Bombay in 1839, to Calcutta in 1850, to Madras in 1852, and to the whole of India under British sovereignty in 1857. This law was amended in 1870 and then again in 1894, yielding the Land Acquisition Act, which, in its amended form, is still in operation in India. This Land Act, however, deals mainly with private land and property. For the regulation and acquisition of common property a parallel set of regulations had to be enacted which came to be called the Forest Laws.

According to the Indian Forest Act of 1927, no person can claim a right to private property in forest land merely because he is domiciled there, or even if his forefathers have lived there for centuries. Nor do such people have any rights over forest produce. Vide section 3 of this Forest Act, 'the Government may constitute any forest or waste land *which is the property of the Government* or over which the Government has a proprietary right, or the whole or any part of the forest produce *to which the Government is entitled*, as a reserved forest . . .' (emphasis mine).

The emphasis in the quotation above is made to point to the fact that this Act already starts with the assumption that the common land which the forest and the people cohabit is the property of the Government, and that the latter is *ipso facto* entitled to the forest produce. From where do these assumptions come?

The Indian Forest Act of 1927, together with its minor addition in 1980, is essentially the same as the Act of 1878. Eighty-one out of eighty-four of its sections are the same. The Act of 1878 itself arises out of the 1865 Act. There was considerable debate within the colonial bureaucracy over the 1865 Act, especially concerning the issue of rights.[6] Citing precedents where Indian rulers had asserted their rights of absolute ownership, such as while demarcating hunting preserves, the makers of the 1878 Act, specially Baden-Powell, argued for the absolute control and ownership right of the state over all common land, whether inhabited or not.[7] Cases in which Indian rulers had arbitrarily extinguished customary rights were noted by Brandis but dismissed by Baden-Powell.[8]

Since it was the practice of Indian rulers not to interfere with the lives of forest dwellers, including their use of forest produce, it took almost eighty years of confrontation and suppression before the colonial powers could devise a sufficiently complex legal mechanism to overcome resistance and gain control over common

land and its resources. Section 4 of the Forest Act provides an elaborate mechanism for claiming any common land as government land. It directs Forest Settlement Officers to issue notice in the official gazette about the government's intention to declare forest land as government property, so that any person who has any right over any part of that land may claim it as his private property. Section 5 puts a bar on all rights if they are not claimed within the stipulated (three months) period. Where private property rights are claimed under the Forest Act, the government can further invoke the Land Acquisition Act and numerous other State Acts to acquire land for 'public purposes'.

Now, this procedure, being based on procedures in England at the time, may *look* just. But how many people dwelling in the forest have now, or have had in the past, access to official gazettes or even to notices in vernacular languages? Moreover, how many of them have been literate enough to understand these notices? There is, moreover, a deeper problem in this procedure than just the primary technical difficulties. Asking a populace to claim rights in private property when they are unaware of such a concept amounts to playing on people's ignorance. As far as we know, no effort was made to educate forest dwellers regarding what 'right to private property' meant, what it meant not to claim such property, and who was entitled to claim it. In such circumstances one can be sure, as the British would have been, that hardly any tribal or other forest dweller would come forward to claim his right to 'private' or even communal property. It must be noted that Section 5 of the Forest Act directs notification for rights to individual private property alone, not to rights in common or the communal rights of tribes and clans.

Through this legal mechanism what the British actually achieved in the eyes of the world, and also perhaps to the satisfaction of their own conscience, was the *appearance* of following a civilized legal procedure for the acquisition of land for a 'public purpose'. The 'public purpose', as any economic history of India will reveal, was nothing but economic benefit for England and its colonial power, not the betterment of the tribals.[9] In applying this legal procedure what the British left strategically unsaid is that justice in this respect presupposes the sharing of a common cognition about the institution of property, especially private property. The modelling of the Land Acquisition Act of 1894 on British legislation was and has been a folly in most of its major parts. The socio-

cognitive presupposition under which such a law can bring about justice was present in England: almost everyone knew of the institution of private property and types of claims that could be made on common land; also, there were no tribals or people of ancient origin living in English forests. This has never been the case in India. British administrators were scarcely unaware of the absence of the concept of private property amongst forest dwellers. Sufficient anthropological and sociological data *was* available to explain the institution of communal possession or ownership amongst tribals, as well as about occupancy rights granted to them by earlier rulers.[10] But in enacting the Forest and Land Acts the British chose to ignore all such data for economic purposes that are now generally classified as colonial.

Forest dwellers had been using forests and their products throughout history. Hence, despite the fact that they did not claim rights to land and its resources after the issuing of official notices, they none the less continued to use them. British law in India had to reconcile to this situation. Sections 6 to 16 of the Forest Act, therefore, deal with claims to partial rights, such as on grazing, water resources, shifting cultivation, the use of forest produce, etc. The Forest Settlement Officer had full power to determine rights and their extent in such matters. Section 7 is entitled 'Inquiry by Forest Settlement Officer'. But on closer inspection it is obvious that this 'inquiry' merely consists of taking down in writing the statements that forest dwellers may themselves come up and make. It involves no fieldwork or research in the documents on land holdings. Since the final determination of such 'rights' depends entirely upon the decree of the Settlement Officer, such entitlements are not genuine 'rights', although they are couched in the language of rights. They become in fact privileges which the officer may grant to particular persons or groups. This distinction was realized by the drafters of the initial 1878 Act who had considerable debates over the 'rights' and 'privileges' terminology.[11]

IV. Civil Rights

The gradual usurpation of common property resources by the colonizers necessitated an order-enforcing machinery through which the use of coercion could be legitimized. This required the legislation of two types of criminal law in India: one for those living on

privately owned land, and an additional but different type for those living or dependent for their livelihood on common land, such as forests. Although in contemporary India we still talk of a uniform code of criminal law for all Indian citizens—following the British way of describing it—this in fact has never been the case. The additional set of rules pertaining to civil and political rights that apply to those living on common land almost eliminates all such rights, which, otherwise, the Penal Code and the Constitution safeguard for property-owning citizens. In this respect those living on private land are a privileged class. Legally, the Forest Act is not just another Act governing common resources. It has in-built into it another additional (parallel) criminal law with its own criminal procedures and sanctions. These legal provisions not only divide the people into two types of citizens—one with more civil rights than others—but also make a mockery of the Fundamental Rights chapter of the Indian Constitution, specially Article 14 which prescribes equality before the law. There is an inherent incompatibility between Article 14 and the Forest Act. It must be noted that the different criminal procedures prescribed in the Forest Act find their ramifications in cognate Acts such as the Wild Life Act. On what basis do I assert that the criminal provisions of the Forest Act are different from those of the normal Penal Code? This will require looking at some basic concepts and principles of the Forest Act and the Criminal Procedure Code (Cr. P.C.).

The criminal law normally provides that no arrests can be made for *non-cognizable* offences without a warrant (Sec.41.Cr.P.C.). Schedule I of the Cr.P.C. enumerates a comprehensive (although not exhaustive) list of cognizable and non-cognizable offences. It is important to note, however, that offences concerning the forest and its produce do not find specific mention in this Schedule; nor does the Forest Act clearly define the exact nature of offences falling within its scope. But, and this is significant, Section 64 of this Act gives full power to a forest officer to arrest anyone without a warrant if he deems that person to be committing an offence pertaining to forests. This clearly makes all such offences cognizable, even though the Forest Act does not so describe it. Making an offence cognizable gives a greater right to the state to regulate the individual's actions, and, consequently, limits the individual's liberties. Normally, as is the case in Indian criminal law, an offence is made cognizable only if the action can cause drastic de-

privation or injury to the victim, such as in murder, dacoity, rape, etc., or else if an imminent danger to the security of the state is perceived, such as in acts of terrorism, smuggling, inciting the armed forces to revolt, and so on. Evidently, with legislation pertaining to forests, the reasons behind limiting liberties and enacting a different type of criminal law is other than grave danger to people or to the security of the state. The reason for the British was clearly to facilitate the economic exploitation of forest resources through coercion and decree. In so far as Indians continue with these laws and procedures, the reason cannot be different. Whether or not the usurpation of the forest and its resources really amounts to 'exploitation' requires a closer scrutiny of the economic rights of those domiciled on ancient common lands. This has so far simply been assumed. But this will not do, for those arguing in terms of the larger (national) interest tend to disfavour any claims to specific economic rights pertaining to groups. Where there is a denial of such rights in the national interest, there obviously cannot be any charge of exploitation. This whole issue therefore requires further and deeper analysis.

V. Economic Rights

Historically, forest dwellers have never truly *owned* the forest in the modern legal sense. What they have had is occupancy rights, i.e. rights to possess the forest and use its products. The *Artha Veda, Brihat Parasara* and other related texts clearly reveal that in the Vedic period the Aryan kings, after they conquered an area, realized taxes for land granted but did not usurp occupancy rights. This tendency became more pronounced in the Mauryan and Buddhist periods. Forest dwellers were granted life tenures. Later, Hindu and Muslim monarchs continued this tradition, even though they proclaimed sovereignty over all land under their jurisdiction.[12]

In 1793, by Regulation II of that year, the British created permanent settlements and transferred vast areas of land to zamindars. Although the land was vested in perpetuity to the zamindars, the absolute owner, according to English law, was the sovereign.

Hence, in the strict legal sense, even the zamindars had only an occupancy right and were mere tax collectors.

Although the British vested property rights in the zamindars they did not do this for forest dwellers. This was despite the fact that, legally, the land granted to forest dwellers by earlier monarchs generated similar occupancy rights for them, as it did for those who cultivated non-forest lands. The nature of the arguments employed with reference to cultivators and forest dwellers was, first, that since those who cultivate the land have occupancy rights granted by earlier monarchs, some of them must be permanently settled and given property rights so as to facilitate the collection of revenue from land; second, since forest dwellers have only occupancy rights granted to them by earlier monarchs, they are not entitled to property rights. The government must own all their land so as to facilitate the collection of revenue from land.

We see thus that the same fact—of having occupancy rights—is interpreted in two different ways, both to assert and deny property rights, to achieve similar ends. In the first case it represents the desire to simplify the procedure for revenue collection. In the second, since forests were virgin lands with massive resource potentials and since the tribals living in them were not educated enough to set up an administrative machinery for revenue collection, it represents the desire to directly usurp the land. Consequently, such common lands were declared 'revenue' lands by the Forest Act and complete control was gained over the resources.

Table 1 gives an estimate of the exploitation of resources prior to the proper setting up of the Forest Department. The exploitation was carried out mainly for the setting up of railways leading to the coasts, and for shipbuilding, so as to export products to Europe.[13]

In 1855 Lord Dalhousie set up a permanent programme for the Forest Department, which, in a major way, is still in operation today. Table 2 presents an estimation of the exploitation of the resources after the Department was given full charge.[14]

Since Independence the exploitation of forest resources has increased many times over. We may observe this magnitude by observing the revenue yield for just one year, 1980/1, in Table 3.

Table 1: Revenue and Surplus of the Forest Department 1869–1925

Yearly Average for the Period (1)		Revenue (Rs million) (2)	Surplus (Rs million) (3)	Percentage of Column 3 to Column 2 (4)
1869–70	to 1873–74	5.6	1.7	30
1874–75	to 1878–79	6.7	2.1	31
1879–80	to 1883–84	8.8	3.2	36
1884–85	to 1888–89	11.7	4.2	36
1889–90	to 1893–94	15.9	7.3	46
1894–95	to 1898–99	17.7	7.9	45
1899–1900	to 1903–04	19.7	8.4	43
1904–05	to 1908–09	25.7	11.6	45
1909–10	to 1913–14	29.6	13.2	45
1914–15	to 1918–19	37.1	16.0	43
1919–20	to 1923–24	55.2	18.5	34
1924	to 1925	56.7	21.3	38

SOURCE: E.P. Stebbing, *Forests of India*, III, p. 620.

Table 2: India's Forests and the Second World War

Year	Out-turn of Timber and Fuel (in cuft)	Out-turn of FD (Rs)	Revenue of MFP (Rs)	Surplus of FD (Rs)	Area under Sanction—Working plus Plans (sq. miles)
1937–38	270	11.9			62,532
1938–39	299	12.3	29.4	7.2	64,789
1939–40	294	12.1	32.0	7.5	64,976
1940–41	386	12.5	37.1	13.3	66,401
1941–42	310	12.7	46.2	19.4	66,583
1942–43	336	12.9	65.0	26.7	51,364
1943–44	374	15.5	101.5	44.4	50,474
1944–45	439	16.5	124.4	48.9	50,440

FD: Forest Department.
MFP: Minor Forest Produce.

SOURCE: *Indian Forest Statistics*, 1939–40, 1944–5, (Forest Dept, Delhi, 1949).

Table 3: State-wise Contribution of Forest Revenue in 1980–1

State	Revenue (million rupees)		Percentage Contribution of Forests
	All Sources	Forests (expected)	
Andhra Pradesh	109.288	2.609	2.38
Assam	30.373	1.125	3.70
Bihar	87.465	1.471	1.68
Gujarat	94.750	1.128	1.19
Haryana	43.332	0.159	0.36
Himachal Pradesh	19.288	1.616	8.37
Jammu & Kashmir	22.573	1.878	8.31
Karnataka	91.244	4.600	5.04
Kerala	59.129	3.178	5.37
Madhya Pradesh	111.488	13.944	12.50
Maharashtra	192.197	5.220	2.71
Manipur	8.456	0.024	0.28
Meghalaya	6.636	0.088	1.32
Nagaland	9.543	0.050	0.52
Orissa	53.690	2.521	4.69
Punjab	54.472	0.404	0.74
Rajasthan	71.659	0.651	0.90
Sikkim	3.501	0.032	0.91
Tamil Nadu	98.266	1.125	1.14
Tripura	8.555	1.125	13.15
Uttar Pradesh	162.234	2.030	1.25
West Bengal	112.373	1.423	1.26
TOTAL	1,450.518	46,401	3.19

SOURCE: Annual Report of the Ministry of Agriculture, 1980–1.

It must be noted that the colossal revenues gained from these resources earlier went to the government and eventually to Europe, and now go to urban centres and industries. Hardly any revenues go back to the people who inhabit the land which generates these resources. To notice the difference between the revenue which goes out of the forest and which comes back to forest dwellers it will be sufficient to observe the data of just one year produced by a Forest Department (Table 4). The total revenue earned from timber in Bihar in just one year (1972–3) is Rs 79,93,001, and the return to the forest dwellers as wages is merely about one lakh, much of

which in any case must have gone to the contractors and sub-contractors who hired the labourers. This income does not include the revenue earned through the sale of minor forest produce (MFP). According to the statements of the Bihar Forest Department, the total earning from *sabai* grass alone during the same year was Rs 1,27,920; and from bamboo Rs 57,72,752.[15] If this is true of just one year in one area, one may imagine the magnitude of the transfer of wealth that has taken place over the last two centuries, as well as the nature of its distribution. The only share the forest dwellers have got in this distribution is what has come to them as wages—wages for destroying the very basis of their own existence. (Note Section B in Table 4.)

Table 4: Activities of the Forest Utilization Division Bihar 1972–3
Details of supplies made to the various agencies through DGS & D.

A.	Serial No.	Description of produce	Quantity (m3.)	Approximate value (Rs)
I.	1.	Salai planks	1,252,682	5,71,981
	2.	Mango planks	172,324	94,327
	3.	Axle wood	294,579	80,513
	4.	Bottom board	42,616	16,535
	5.	Sal planks	49,898	31,700
	6.	Sal slocpera	70,868	49,608
	7.	Sissoo logs	5,160	5,010
	8.	Haldu	192,447	1,64,632
	9.	Sal scantlings	132,332	76,219
	10.	Bija logs	14,146	13,984
	11.	Sissoo logs	1,184,018	8,33,180
	12.	Laurel logs	1,454,301	5,46,869
			Total	24,86,858
II.		*Kosi Project (Poles)*		
	1.	10.16 cm. (4″)	5,141 nos.	
	2.	12.70 cm. (5″)	5,274 nos.	
	3.	15.24 cm. (6″)	13,449 nos.	5,47,369
	4.	17.78 cm. (7″)	8,130 nos.	
	5.	29.22 cm. (8″)	1,499 nos.	
		Total	33,493 nos.	
III.		Fencing Posts	89,788 nos.	2,28,183

IV.	Railway Sleepers		
	B.G.	11,953	
	M.G.	34,558	22,00,466
	N.G.	45,145	
	Special	15,608	
V.	*Bihar State Electricity Board (Treated poles)*		
	Poles (A)	2,434	
	(B)	16,613	
	(C)	6,074	16,67,710
	(D)	7,172	
	(D) & (E)	3,766	
VI.	*UP Electricity Board*		
	Poles (A)	530	31,206
VII.	*H.E.C. orders*		
	(i) Salai planks	289,025 m3	
	(ii) B.G. sleepers	10,777 nos.	
	(iii) Misc. scantlings	4,719 nos.	8,31,164
	(iv) Karam planks	86,571 m3	
	(v) Sal planks	44,809 m3	
B.	Benefit derived by local people		
	(i) Number of persons employed (mostly aboriginals)		41,860
	(ii) Approximate amount paid as wages		1,04,680

It is sometimes assumed that although the monetary returns to forest dwellers through wages for felling trees is meagre, the economic gains made available to them through affirmative state action compensates for the loss. This is untrue. One may note, for example, that the total budget outlay for 1980–1 in the Sixth Plan for development among all the backward classes put together—not just the forest dwellers—was about Rs 1351 million, while, as noted, the total gain from the forest resources alone during the same period was Rs 1451 million. Since the Scheduled Castes form a larger group amongst the backward classes, they would have taken a greater share of state aid than tribal forest dwellers. In terms of *giving* to the state, however, it is the forest dwellers who forsake a greater fortune. Moreover, the state aid cannot be taken at face value. It is a well known fact that only a small portion of the state's finance meant for development finally filters down to those for whom it is intended. A large portion of it is eaten away by

corrupt middlemen and an equally large portion remains unused for lack of proper motivation for distribution. Table 5 shows the expenditure outlay for development among backward classes in the various Five Year Plans.

Table 5: Expenditure on Development Plans for Backward Classes

S. No.	Plan	Scheduled Castes	Scheduled Tribes	Other Backward Communities	Voluntary Organizations.	Total (Rs in crores)
1.	First	7.08	19.83	3.13		30.04
2.	Second	27.48	42.92	8.14	0.87	79.41
3.	Third	37.78	51.05	9.82	1.75	100.40
4.	1966–69	26.47	34.54	6.75	0.74	68.50
5.	Fourth	61.12	80.89	22.23	2.00	166.34
6.	Fifth (1974–79)	220.07	76.12	24.90	2.46	323.55*
7.	1979–80	54.24	19.35	1.21	0.79	75.59@
8.	Sixth (outlay)	N.A.	N.A.	N.A.	N.A.	951.00**
9.	1980–81 (ant. exp.)	N.A.	N.A.	N.A.	N.A.	135.08@@

* Excluding Rs 1.53 crores spent on Direction and Administration.
** Excluding Rs 9.30 crores spent on Direction and Administration.
@ Excluding Rs 0.72 crore spent on Direction and Administration.
@@ Excluding Special Central Assistance of Rs 470 crores for Tribal Sub-Plans and Rs 600 crores of Special Central Assistance for Scheduled Castes.

SOURCE: *Report of the Commissioner for Scheduled Castes and Scheduled Tribes*, Pt I (1979–81).

Let us look now at what Indians did with the economic rights of the forest dwellers after the British left.

Since the zamindars had become exploiters of the landless, and since at the time of Independence there was a strong political will to undo the injustices perpetuated by landlords, various Land Reform Acts were promulgated in different states. The Land Acquisition Act of 1894, enacted by the British earlier (hereafter referred to as the Land Act), was also amended in various ways to

allow land reform. Together with this came the Zamindari Abolition Acts of UP and Bihar. An essential aim of all such new Acts and amendments was to give property rights to those who had toiled or lived on the land for long but who remained mere occupants at the mercy of the landlords; in other words to convert occupancy rights to property rights. The Land Reform Acts and the Zamindari Abolition Acts usually required an occupancy of twelve years for entitlement to property rights. Besides seeking social justice for the landless, the motivation for these land reforms was to provide better management and productivity conditions for agriculture. The subsequent failure to carry out such reforms to the degree desired has its roots in problems such as the lack of proper land records and legal complexities involved in rent, leasing, occupancy, etc. However, what interests us here is not the success or failure of such land reform measures but the justifications proposed for them.

If those who have occupancy rights on domiciled or cultivable land for more than twelve years are entitled to property rights, why does this principle not apply to forest dwellers who have had occupancy rights on non-agrarian lands for centuries? Indians, like the British, have continued to use double standards with occupancy rights, and for similar ends—the exploitation of resources from the common land. The justifications for the denial of property rights to occupants of land which has been declared common are three fold: first, the doctrine of 'eminent domain' or sovereignty; second, the utilization for public purposes argument, and third, the national development argument. These three justifications are interrelated. The principle of eminent domain or sovereignty proclaims that the state has an absolute right to acquire land and its resources under these two conditions: (a) wherever public purpose has a priority over personal benefits; (b) wherever national interests override personal or communal interest. However, the condition under which law permits the application of this principle—so that it is just and not a mere acquisition by fiat or coercion—is very strict: wherever rights to occupancy, use or property arise in the land so acquired, due compensation must be paid to all those who are deprived of such rights. Let us examine each of these grounds in detail.

VI. Eminent Domain

To begin with, it is necessary to note the specific laws in India which embody the principle of eminent domain and the extent to which they do this.

The principle of eminent domain is promulgated through Article 31A of the Indian Constitution. It is also enshrined in the Land Act of 1894 and the Forest Act of 1927, and presupposed by other cognate Acts instrumental in the acquisition of property by the state. Section 2a (iii) of Article 31A especially extends this domain over all types of forest—most of them already acquired and others covered by the Forest Act prior to the enactment of this law. This constitutional reaffirmation seems to be aimed only at removing any remaining ambiguity about the state's power. This power was further consolidated by making almost all laws concerning land acquisition unjusticiable in any court by enlisting them in the Ninth Schedule of the Constitution. About 71 of the 188 laws in this Schedule pertain directly to land acquisition. Legislation in 1984 has added some more laws to this list. Article 31B of the Constitution makes these laws unjusticiable—in terms of whether or not they actually give effect to the policy advocated by the Directive Principles. Article 31C debars any claim that they are inconsistent with Fundamental Rights, such as the right to reside and settle in any part of India (Article 19(e)).

However, the subsequent jurisprudence which has evolved around Article 31C has altered the nature of this Article in some fundamental ways. The complexity of this jurisprudence, part of which as we shall see is involved in contradictions, opens up the possibility of interpreting it in different ways.

Article 31C came into the Constitution in 1971, through the Constitution (Twenty-fifth Amendment) Act of 1971, to give protection to laws enacted for the purposes of carrying into affect the policies advocated in the Directive Principles 39(b) and (c), which state:

39(b). The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

39(c). That the operation of [this] economic system does not result in the concentration of wealth and means of production to the common detriment;

Article 31C was amended by the Forty-second Amendment in 1976 to provide protection to many laws seeking to enforce the Directive Principles from attack on the ground that they violated Fundamental Rights. However, in *Minerva Mills*[16] the Supreme Court held by a divided court that this Amendment was void as being destructive of the basic structure of the Constitution as laid down in *Keshavananda Bharti.*[17] The authority of these two judgments together creates an open-ended arena of meanings which can make judicial review operative within a larger legal space, depending greatly on the ability of jurists to perceive contradiction in meaning and purpose within the law, and also on their ideological preferences. In *Sanjeev Coke Mfg Co.* v. *Bharat Coking Coal Ltd*,[18] for example, where the validity of the Coal Mines (Nationalization) Act, 1972, was concerned, the Supreme Court held in majority that the Act was in accordance with Article 39(b) and hence protected by Article 31C. In *National Textile Workers Union* v. *P.R. Ramakrishna*,[19] however, where the issue was whether or not the workers have a right in decisions in the winding up proceedings of a factory, the Supreme Court was sharply divided in its view over the application of the Directive Principles. In any case, after *Kesavananda Bharti*, and specially *Minerva Mills*, the power of judicial review has become a part of the basic structure and hence the scope of Article 31C is an open question. Is the Forest Act valid in the light of Articles 39(b) and (c) and Articles 14 and 19? This needs to be considered.

The principle of eminent domain has a history as old as law itself. Jurists usually seek its roots in the Latin maxim of Roman law: '*Salus populi est suprema lex*', i.e. 'the welfare of the people is paramount law'. But old as the principle may be, in terms of its substantive interpretations and scope there has been a continuous evolution of the conditions under which it can be justly applied. But it is interesting to note what the Law Commission has to say in the very opening paragraph of its Report on the Land Acquisition Act: 'The Power of the Sovereign to take private property for public use and the consequent rights of the owner for compensation are well established . . . A critical examination of the various stages of evolution of this power will serve no useful purpose as the power has become firmly established in all civilized countries.'[20] Similarly, the Mulla Committee's Report begins by merely asserting—'It is a *right* inherent in every sovereign to appropriate

property belonging to individual citizens for public use.'[21] It seeks support by referring to the Fifth Amendment of the American Constitution, which recognizes that in some cases the necessities of government must override the right to private ownership. Popular Indian texts on land acquisition, such as those of Ghosh[22] or Ramchandran,[23] too, dismiss any deeper analysis of the notion of eminent domain either on the grounds that it is not a matter of polity or that it is well established in other laws. This is far from the truth. The development of American, Australian, Canadian, British and other common law traditions has proved that the notion of éminent domain is not as straightforward and as bereft of polity as Indians assume. If Indian jurists are to seek justification by citing the Fifth Amendment of the American Constitution, what stops them from observing how this Amendment has changed over the years? Perhaps an unconscious desire to maintain the status quo?

The notion of eminent domain seems to have originated from Hugo Grotius's *De jure belli ac pacis* in 1625. The sound justification for this power is that in a developing country society as a whole (as a state) must undertake actions for a public good, which actions individuals cannot do by themselves, such as building roads, bridges, railways, etc. However, the two necessary limitations on this power were stressed by Grotius himself: that appropriation of property must genuinely be in the public interest, and that due compensation must be given. Without these two limitations—which are internal to the very notion of eminent domain—the justification for such power is absent, turning it into arbitrary, dictatorial fiat. These two limits on the sovereign power were stressed not only in the Mulla Committee's Report but also in *Charanjit Lal* v. *Union of India*[24] in 1950 and in other cases. In *Kameshwar Singh* v. *State of Bihar*[25] Justice Chandrashekhar Aiyer observed: 'Property of the individual cannot be appropriated by the state under the power of eminent domain for mere purposes of adding to its revenues; taxation is the recognized mode to secure this end. If the latter was the real object it must be observed that to take one man's property compulsorily for giving it away to another in discharge of government's obligation is not a legitimate and permissible exercise of the power of acquisition.'

Subsequently, without eliciting public opinion and without submitting the charges to the scrutiny of a Select Committee followed

by a debate in both houses of parliament, the Janata government removed the right to property by the Forty-fourth Amendment. Articles 19(1)F and 31 were deleted from Part III of the Constitution, and in Part XII 300A was inserted, which made the right to property a legal but not a fundamental right. These changes were made by the Janata Party without realizing (a) the close relationships of property right to other fundamental rights; (b) the effect of this change on the legislative power to acquire and requisition property; and (c) the correlation of Fundamental Rights to Directive Principles. Article 31 appeared under the heading 'right to property' and it provided that private property would be acquired only for a public purpose on payment of compensation. By deleting this Article even the right to due compensation vanished.

One may think that such legislative activism is justified from the perspective of socialism, since maharajas and big zamindars ought to share their property with the public. But this is a simplistic view of the problem because it overlooks the fact that the same laws of acquisition and denial of compensation apply to forest dwellers and tribals who are at the bottom of the poverty line. Does socialism entail that if due compensation is denied to the rich it must also be denied to the poor? Evidently, the jurisprudence concerning the state's power under eminent domain in India must work out a much more complex solution for compensation so that it does justice to the poor (or those who have been made poor) and is not merely preoccupied with the appropriation of the wealth of the rich. Part of the reason why the jurisprudence concerning sovereignty has evolved only around the problems of the rich is that it is only they who have been able to move the courts. But this does not mean that the problem does not exist at the other end. If legislation is to be socialist it must take account of both ends.

In so far as helping poor forest dwellers is concerned, Indian jurisprudence has actually moved in the opposite direction. Monarchs in ancient India used the eminent domain principle to assert their ownership over common forest lands, but they granted occupancy rights and did not appropriate common resources. The British in India denied occupancy rights and appropriated common resources. But through the Land Act they at least granted equivalent compensation in the event that a right to private property was proved. In the post-British period, Indians have not only

appropriated the common land and its resources but almost ruled out any question of occupancy rights. The appropriate step at the time of Independence, when the new constitution was made, would have been to re-examine the whole issue of occupancy rights for forest dwellers—the customary rights which the British had suppressed for colonial ends. Instead, all that was done was to proclaim fundamental rights in the abstract in a manner which did not even take note of the fact that the civil rights of forest dwellers could become fundamental rights only by contradicting the edicts of the Forest Act.

Over the last two centuries the issue of occupancy rights, specially where it has been an aspect of customary rights, has received serious attention in the common law tradition, although Indians have neglected this. It is important to look at the evolution of this notion in common law generally, and also specifically in those contexts which have direct relevance to the Indian situation. The significance of these observations lies in the determination of the fact that entitlement to occupancy rights for Indian forest dwellers is not without grounds in common law.

VII. Occupancy Rights

It is true that historically the situation of forest dwellers in India is not the same as that of aboriginals in Australia or New Zealand, or of Red Indians in the United States, or of Inuits in Canada. But, as we shall see, in so far as claims to rights in common are concerned there are significant similarities. Therefore considerations of the American, Canadian, Australian, and other common law jurisprudence concerning rights in common, will not be out of context. In a major way the Jharkhand, Chipko, and other similar movements, are nothing but a demand for rights in common. The history of the struggle of forests dwellers for their rights is as old as the legislation governing them.[26]

As is known, prior to British rule in India tribals and forest dwellers had access to their land and resources in common. The British did not accede property rights in common to such people. The justification for this denial has long gone unchallenged; only in this decade has such legal justification come under fire. This is partly because tribals have now, via education, become aware of

their rights and organized themselves in order to raise voices in protest.

It is interesting to see that, in the recent past, Australian, Canadian and American jurisprudence—which Indian jurists generally neglect (beyond the inception of the Fifth Amendment)—has moved in a direction which is quite the reverse taken in India, a direction which has not only been more liberal in compensation to the deprived where applications of the eminent domain power have been concerned, but one which has also progressively tended to recognize more and more of the claims over land by aboriginals, natives or tribals. The fact that Indian forest dwellers have not been able to press their claims with the government or the Human Rights Commission seems to be only in part because they have not benefited from modern education and technology, as have their counterparts in the USA, Canada and elsewhere.

The arguments emerging from the debates on Blackburn J.'s decision in *Milirrupum* v. *Nabalco*[27] in Australia seems to be most successful in bringing into the open the basic issue at stake in questions of occupancy rights: can a community claim title on its traditional land when the subsequent sovereign has acquired it by conquest, treaty or 'discovery'? The majority of recent decisions in common law, some of which we shall subsequently consider, have affirmed the right to claim such titles, and often granted them. But Blackburn disagreed. Hence it becomes important to discuss the reasons for his disagreement.

To support his judgment, which concerned aboriginal titles at common law in Australia, Blackburn attached considerable significance to the line of authority presented by the Indian 'act of state' cases, particularly to *Vajasingi Joravarsingi* v. *Secretary of State of India*.[28] He argued that this line of authority established that 'in acceded or conquered territory a subject cannot in law resist the expropriation by the Crown of what under the previous Sovereign was his property.'[29] He accordingly reasoned that aboriginal rights to land extant before conquest or settlement did not survive the establishment of another sovereign power, and thus there could be no doctrine of 'communal native title' at common law. Blackburn explained:

> The question whether English law, as applied to settled colony, included, or now includes, a rule that communal native title where proved

> to exist must be recognized, is one which can be answered only by an examination of what has happened in the laws of various places where English Law has been applied. I have examined carefully the laws of various jurisdictions which have been put before me in considerable detail by the counsel in case, and, as I have already shown, in my opinion no doctrine of communal native title has any place in any of them, except under express statutory provisions.[30]

Blackburn also purported to rely upon the reasoning of the Supreme Court of the United States in *Tee-Hit-Ton Indians* v. *United States*.[31] The court there declared that the aboriginal title was 'not a property right', but a 'right of occupancy' which 'creates no rights against taking or extinction by the United States protected by the Fifth Amendment or any other principle of Law'. From this Blackburn inferred that native titles do not exist in the United States. In his view the authority 'affirms the principle that the Indian "right of occupancy" was an interest which could be set up against the sovereign, or against a guarantee of the sovereign, in the same manner as an interest arising under the ordinary Law of real property.'[32]

Blackburn's judgment not only grossly misunderstands American jurisprudence but also does grave injustice to the issue of communal titles by selectively referring to the few cases which deny such titles and ignoring those which bring out the complexity of, or actually affirm, communal titles. The *Tee-Hit-Ton* case, as we shall see, is not a denial of the aboriginal title, but is rather an affirmation of a long established principle. This was not only established earlier in *Johnson* v. *McIntosh*[33] but reaffirmed again and again in cases such as *United States* v. *Sante Fe Pacific Railroad*[34] and *Oneida Indian Nation* v. *Country of Oneida*.[35] Moreover, in asserting in *Milirrupum* that the doctrine of communal native title has no place in common law, Blackburn was not only doing injustice to the interpretation of American cases but also to other significant cases from Africa, which he mentions in the judgment but dismisses without reason.

Viscount Haldane in *Amodu Tijani* v. *Secretary Southern Nigeria*, a case relating to the cession of sovereignty to the crown, remarked:

> No doubt there was a cession to the British Crown, along with the sovereignty, of the radical ultimate title to the land in the new colony,

> but this cession appears to have been made on the footing that the rights of property of the inhabitants were to be fully respected. This principle is a usual one under British policy and law when such occupation takes place . . . It is not admissible to conclude that the Crown is, generally speaking, entitled to the beneficial ownership of the land as having so passed to the Crown as to displace any presumptive title of the natives. A mere change in Sovereignty is not to be presumed as meant to disturb rights of private owners; and the general terms of the cession are prima-facie to be constructed accordingly.[36]

Viscount Haldane's judgment is not an oddity; it is in keeping with most progressive and liberal judgments. In the leading *Johnson* v. *McIntosh* case Chief Justice Marshall, of the United States Supreme Court, who regarded the United States as a territory acquired by 'settlement' and a 'discovery', none the less accepted that the 'right of the conquered to property should remain unimpaired'. The doctrine of aboriginal titles was repeatedly affirmed in other decisions. By 1922, in *Cramer* v. *United States*,[37] the court made explicit that 'the fact that such right to occupancy finds no recognition in any statute or other formal governmental actions is not conclusive'. By 1941 the court was able to declare in *Sante Fe Pacific Railroad* v. *United States:*

> Unquestionably it has been the policy of the Federal government from the beginning to respect Indian right of occupancy, which could only be interfered with or determined by the United States . . . This policy was first recognized in *Johnson* v. *McIntosh* and has been repeatedly reaffirmed . . . Indian right of occupancy is considered as sacred as the fee simple of whites.[38]

The court emphatically denied in this case 'that a tribal claim to any particular land must be based upon a treaty, statute or other formal government actions'. By 1974 this fact was more clearly stated and affirmed in *Oneida* and, more recently, in *Naragansett Tribe* v. *Southern Rhode Island Land Development Corporation*.[39] The United States District Court (First Circuit) asserted that 'Indian titles arise from the ancestral dominion of land, and need not be solemnized in any treaty, statute or other formal government action'.[40]

In *Calder* v. *Attorney General of British Columbia*[41] the Canadian Supreme Court declared Blackburn's decision to be 'wholly wrong'. Hall J. (Spence and Larkin JJ. concurring) relied upon

American jurisprudence and concluded that 'the aboriginal Indian title does not depend upon treaty, executive order or legislative enactment'. He commented on Blackburn J.'s 'errors' in accepting 'the proposition that after conquest or discovery the native people have no rights at all except those granted or recognized by the conqueror or discoverer.'[42] The judgment in *Calder* was recognized in *Re Paulette and Registrar of Titles*[43] by Marrow J. of North West Territories Supreme Court, who observed that 'even without the Royal Proclamation of 1763 there can be such a legal concept as Indian title or aboriginal rights in Canadian Law'. And in *Hamlet of Baker Lake* v. *Minister of Indian Affairs and Northern Development*,[44] Mahoney J. of the Federal Court declared that the judgment in *Calder* provided 'social authority for the general proposition that law in Canada recognizes the existence of an aboriginal title independent of the Royal Proclamation or any other prerogative Act or legislation. It arises at common law.'[45]

New Zealand is a territory that was acquired by settlement by subjects of the Crown, with the Maori as the indigenous population. The existence of the aboriginal title of Maori was affirmed in *R.V. Symonds* in 1847,[46] wherein Chapman J. declared:

> Whatever may be the opinion of jurists as to the strength or weakness of the Native title, whatsoever may have been the past vague notions of the Natives of the country, whatever may be their present clearer and still growing conception of their dominion over land, it cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers. But for their protection and for the sake of humanity, the Government is bound to maintain, and the courts to assert, the Queen's exclusive right to extinguish it. It follows from what has been said, that in solemnly guaranteeing the Native title, and in securing what is called the Queen's pre-emptive 'right', the Treaty of Waitangi confirmed by the Charter of the Colony, does not assert either in doctrine or in practice anything new and unsettled.[47]

Chapman relied upon the principles declared in the United States jurisprudence which he described as 'the principle of common law'. Aboriginal title at common law in New Zealand does not rest upon the authority of *R.V. Symonds* alone. In *Nireata-Tamaki* v. *Baker*[48] the Privy Council expressly approved the observations of Chapman J. This was affirmed again in *Re: Ninety-Mile Beach*[49] by North J.

Like the African *Amodu Tijani* case, Blackburn J. dismissed the reasoning in *R. V. Symonds* as mere obiter. But fortunately *Milirrupum* is not the last word in Australian law. Numerous legislations have been enacted to do justice to aboriginal land titles. Noticeable amongst these are the Aboriginal Land Rights (Northern Territory) Act, 1976;[50] the Pit-Jantiatjara Land Rights Act, 1981;[51] and the Aboriginal Affairs Planning Authority Act, 1972.[52]

Although these legislations have numerous shortcomings, together with the court judgments they go a long way in providing the framework within which distributive justice can be dispensed.

Although *Milirrupum* is the odd judgment going against the prevailing common law tradition, it is significant because of the issues it has brought to the fore, and specially because these issues are directly relevant to the Indian situation.

The principle that communal titles to land are independent of legislations, proclamations and edicts by the sovereign as well as from changes in sovereignty—which emerges from the common law tradition in the USA, Canada, Australia, New Zealand and African countries—amounts to nothing but the proclamation of a natural right, a right which is acquired by domicile. It is comparable to the principles which govern natural rights to citizenship through which an individual acquires a right to domicile within a geographical territory, irrespective of whether sovereigns have changed or the form of government altered. Such a right does not depend upon enactments. On the contrary legislation merely *recognizes* that such a fundamental right exists. New common law jurisprudence has shown that rights which arise from being domiciled in a geographical area apply not only to individuals but also to groups or classes. The ultimate philosophical justification for both individual and communal rights to reside within a geographical territory have to be the same, i.e. both types of rights arise for the same reasons.

Once the right to residence is recognized as fundamental, the question naturally shifts to the issue of proof of title, and this is the direction in which common law has evolved subsequent to the judgments such as *R. V. Symonds* and *Johnson* v. *McIntosh* and *Calder*. Jurisprudence accruing in the USA after 1946 remains relevant despite its development under the Indian Claims Commission Act.[53] The Act established the Commission to hear claims,

inter alia, 'arising from the taking by the United States . . . of Lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant.'[54] The Commission and the courts of claims, upon review, have purported to follow the principles developed at common law regarding proof of aboriginal title to determine original Indian 'ownership or occupancy'. Such proofs base themselves on sociological and anthropological data. In *United States* v. *Santa Fe*,[55] the United States Supreme Court accepted that proof was a matter of fact and not of law. Sociological facts about the continued definable territory occupied exclusively by the claimants were taken into account. Similarly, in *United States* v. *Pueblo of San Illefonso*[56] the court took into account the historical record of the region. In *Confederation of Tribes of Warm Spining Reservation of Oregon* v. *United States*,[57] since the land under claim was wandered over by many bands who claimed to be sub-tribes of a large tribe, the court considered the linguistic stock of the bands, their common religious practices, allegiances, the fact that other tribes considered the lands as those of one tribe—in granting the claims. Similarly, in *Turtle Mountain Band* v. *United States*[58] a cluster of bands was shown to have aboriginal title to an area of approximately ten million acres. The regard for considerations of socio-cultural facts was affirmed in that case by the inclusion of mixed-blood members in the group. In the same way the identification of groups and their claims have been made with help from sociologists, anthropologists, historians and others in *Mitchel* v. *United States*,[59] *Tinglit and Haida Indians of Alaska* v. *United States*,[60] and many other cases. The Canadian decisions have developed similar criteria for proof of title to those developed in the USA. This is evident from *Worcester, Calder, Re Paulette, Hamlet of Baker Lake,* and numerous other cases. The situation in Australia, New Zealand and Nigeria is similar.

This lengthy discussion and the numerous citations were necessary to show that the issue of occupancy right is not a matter of digging up old graves; it is a living issue in law and its growth can lead to a greater realization of distributive justice, specially with regard to economic rights. It is evident that India has not been following this evolving common law tradition. Although Indian jurists swear by the Fifth Amendment of the American Constitution to justify state power within eminent domain, they turn a blind eye to the

subsequent jurisprudence that has evolved around this American law.

As this evolving common law jurisprudence shows, the fact of changing sovereignty within a nation does not by itself abolish rights and titles to communal property. There are numerous tribes (mainly forest dwellers) in India who have held land in common since time immemorial. Sovereignty over their land has changed from local kings to the British crown to the Indian government. These changes cannot, therefore infringe or abolish their title to land at common law even now. The British abolished their rights by political fiat for reasons of economic exploitation of the resources. The 'act of the state' jurisprudence invoked for this purpose is nothing but a statement that the state may act and decree as it wishes. But as the numerous cases cited show, common law does not recognize state decree as a condition for the abolition of communal titles or customary rights in land. There are limits to the state's decree: it must not be violative of the fundamental principles of law, or of the constitution's basic structure—as Indian jurists like to put it. The introduction of the 'act of state' jurisprudence through *Vajssingi Joravarsinghi* v. *Secretary of State of India* by the British is thus not only legally arbitrary but also *ultra vires*. It is *ultra vires* because, as Viscount Haldane's judgments in *Amodu Tijani* as well as *R. V. Symonds* show, such a legal or jurisprudential practice has not been followed even in British law. In so far as the British intended to extend the law to India, it has no validity or support in their own laws, or even in common law in general. It is arbitrary because the British did not apply their own laws or the common law to India; they manufactured a rule and gave it the cloak of legality for purposes already noted. The common law jurist's claim—such as that of Blackburn in *Milirrupum* and the Canadian judges' in *Baker, Calder* and other cases—that the Indian 'act of the state' cases are inapplicable to their own cases at common law—reveals a misunderstanding of British legislation. What they do not perceive is that it is only inapplicable because it is not common law at all. Instead of confounding the issues in legal jargon, common law jurists need to be forthright in openly asserting that in India the British violated basic common law principles, including those evolved within their own jurisprudence. The basic reason for the inapplicability of the Indian 'act of the state' cases to the Australian, Canadian and other common law cases is that these cases

are not cases in law at all, they are cases of political dictate.

After Independence, instead of reversing colonial policy with regard to common resources and attempting to establish a common law which the British had destroyed in India, the various Indian governments, backed by mercantile and industrial interests, have ironically moved further away from the common law tradition towards dictate by political fiat. The 1927 Forest Act was further fortified by a bill in 1982 which gave greater power to those who deprive the domiciled people of their resources. Numerous other state Acts, ordinances and rules have been passed to further this end.

The Indian Constitution borrowed a great deal from other common law codes, and court judgments continue to do so. The issue is—why must this borrowing be in a manner which benefits only certain classes and not others? With respect to forest land resources and the people who can claim a communal title on them, the situation in India is comparable to that in southern Zimbabwe. A privy council there found that rights in land were not possessed by any native tribes however long they may have been domiciled in that part of Africa! Lord Summer said in *In Re Southern Rhodesia*:[61]

> Some tribes are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilized society. Such a gulf cannot be bridged. It would be idle to impute to such people some shadow of the rights known to our law and then to transmute it with the substance of transferable rights of property as we know them.[62]

Such a judgment may as well have been made in India. It must be emphasized again that an aboriginal title is not concerned with rights and duties *inter se* of members of a tribe under a prior sovereign, and the remarks of the privy council with respect to this are not pertinent to the proof of such a title at common law. Thus in India even if tribal chiefs had ceded sovereignty to an Indian king, or to the British crown, the titles of the rest of the members are not now vacuous on such grounds, despite the Indian parliament refusing to accept or recognize them.

The Indian parliament did recognize the existence of distinct communities of tribals and forest dwellers. The Fifth and Sixth Schedules of the Constitution make all such people a separate class of citizens deserving special attention. Whether they have received

what they deserve, and the basis on which a decision about what they actually deserve is to be made, needs to be considered in detail. Here it is important to note that when it comes to deserving land (in terms of occupancy rights) the Seventh Schedule in its concurrent list (17A) makes the land of the tribals both a matter of state and central control in order that the resources arising from them can be regulated by the government. In relation to occupancy rights over land, the definition of 'tribals', arising from the Fifth and Sixth Schedules, is made entirely irrelevant. The different definition utilized here is comparable to that in the UP Zamindari Abolition Act, 1950. Here *adivasis* (aboriginals) are only those whose hereditary rights are acknowledged in the *khasra* and *khatauni* of the 1356–7 *fasli*, and subsequently recorded in the Land Settlement Record of 1901 under the UP Land Revenue Act, 1901.[63] Such a definition of *adivasi* clearly leaves out the majority (or all) of the tribals whom the law recognizes for the purposes of affirmative action since hardly any tribal or forest dweller in likely to find his forefathers' names in the *khasra* or *khatauni* of 1356. This legal definition of adivasi is, therefore, finally meant to give property rights only to a class of landlords who have been influential enough through generations to have had their names entered in the 1356 *fasli* or the 1901 Record. Moreover, it provides an apparently acceptable excuse for not granting property rights to occupants on common land although they may have lived on it since 1356 *fasli* and even prior to this. There is thus a sharp dichotomy between the economic benefits derived through laws aimed at acquisition of common property resources and the laws (such as those made for affirmative action) which grant benefits to people deprived of such resources. We shall consider subsequently whether what is given balances with what is taken.

Having seen the application of the principle of eminent domain in law and the related issue of communal and individual rights, we shall turn now to discuss the two conditions under which its application is justified.

VIII. Public Purpose

The application of the eminent domain principle is just only when made for the sake of public purpose and when due compensation is

given to the party deprived. As we have seen, when the party deprived is already rich, what is *due* to it as compensation can be interpreted in ways which make the compensation a mere token grant. But this is possible only when the prevalent ideology perceives the acquisition to be truly in the public interest and regards compensation as not really being due in all cases, such as to monarchs who have acquired wealth by fiat. Such a justification for denying compensation presupposes that the general public is poorer than the person whose property is being acquired. The other condition in which the acquisition of private property is tenable is when the acquisition facilitates public services such as the railways, road travel, public offices, etc. In such cases it can be assumed that the *entire* public benefits. Here the issue that some people are poorer than others does not arise. But we notice that in both types of conditions the issue of public purpose is not independent of *who* the public is. This is tacitly presupposed.

The definition of public purpose has always been difficult in law. But it is important to notice what types of difficulties judgments and jurisprudential literature have addressed themselves to in India and elsewhere, and what they have neglected.

The Land Act of 1894 contemplated acquisition for public purposes for companies. The expression occurs in Sections 6(1), 8(1), 17(1), 35(1) and 40(1) (aa). Under Article 31A of the Constitution the existence of public interest is a condition prior to the exercise of the power of eminent domain. The Forest Act does not explicitly say that forests are being 'protected', 'reserved' or 'conserved' for public purposes. But the fact that the acquisition of forests is governed by Article 31A (2) (a iii) of the Constitution, which specifies forests and other common lands—as well as the fact that the Forest Act involves the Land Act in cases of dispute over rights or when the forest is a private property—clearly proves that the application of eminent domain in the Forest Act is tenable only in the name of public purpose (vide 32 (2) (a iii)) and the Land Act.

No legislation defines public purpose; only case law is relied upon. The leading case of public purpose in India is *Hamabhai Framjee Petit* v. *Secretary of State for India*.[64] Here the Judicial Committee of the Privy Council did not think it wise to define the notion and relied upon an earlier judgment of Bachelor J., which asserted that purpose must concern the interest of the

community.[65] *Petit* has been repeatedly followed by the Supreme Court of India ever since. In *Kameshwar Singh*, Das J. and Mahajan J. quoted *Petit* with approval, arguing that it would be unwise to give a rigid definition of public purpose since changing conditions demand different interpretations. The Law Commission, which was asked to enquire deeper into the rationale behind the operation of the Land Act—came up in its Tenth Report with similar suggestions. It pointed out that the position in American jurisprudence was similar. A better consideration of public purpose is to be found in *Thambiran Padayachi* v. *State of Madras*,[66] in which Venkatarama Aiyar J. decided in favour of an elasticity in meaning for the expression for reasons similar to *Kameshwar Singh*. A still more detailed consideration is to be found in the Land Acquisition Review Committee's (Mulla Committee's) Report, 1979. This Report makes a list of the purposes which the courts have declared 'public', and suggests that they roughly define the boundaries within which the notion needs to be interpreted.[67]

These observations make it obvious that Indian judgments and the related literature have never really gone into the basic question of what is meant by 'public'; they have addressed themselves only to the issues of 'purpose'. The expression 'public purpose' is a complex concept correlating two distinct notions, 'public' and 'purpose'. There are therefore two types of problems inherent in this complex notion, one which requires a decision-procedure or criterion for who or what shall constitute 'public', and the other which requires a definition of what shall constitute 'public purposes'. The Mulla Committee's Report considers the various purposes which the courts have declared public but not who are to constitute such a public. None of the court decisions have dealt with this latter question either. They are all engrossed with defining and delimiting purposes, wholly neglecting the business of defining, delimiting and identifying the public for whom the purposes are to be attained.

This one sided jurisprudential development may not be unintentional. The class or 'public' which more often than not benefits from such acquisitions is the rich. This is patently true in the acquisition of common land, especially forests. The public of the 'public purpose' for which forests have been acquired constitutes all but the forest dwellers. This clearly shows that the notion of public purpose does not operate in the same way with reference to

both private property and common property. The Land Act, the Forest Act and the Indian Constitution only pretend it does. They gloss over the difference by clubbing both private and common lands under the same category, as in Article 31A. Therefore the correct notion of 'public' must be clearly built into Indian laws wherever the acquisition of different types of property is concerned, even if other legal systems do not contain such a notion. We shall soon see how this can be done. Here it will be important to consider the second justification for eminent domain power.

IX. Compensation.

To begin with, it must be emphasized that the real issue with forest dwellers is not compensation but the recognition of rights, for once their rights are recognized their entitlement to compensation becomes obvious. Discussing fair and just compensation makes little sense when we are still involved in the process of criminalizing the innocent and life-protecting activities of forest dwellers. None the less, having shown the fundamental validity of the basic rights of forest dwellers, the issue of compensation cannot be ignored for, as noted earlier, compensation forms part of the justification for the denial of property rights to occupants of land acquired for a 'public' purpose. Moreover, there is another and more significant reason why the notion of fair compensation needs to be discussed, despite the fact that the rights which it presupposes are not yet realized. The beneficiaries of common property resources often try to sidetrack or avoid any discussion of the occupancy rights of forest dwellers by asserting that sufficient compensation is given to such dwellers. Aids, loans, educational facilities and so on are cited as adequate compensation in order to pre-empt any invocation of rights. To check the veracity of such assertions it is necessary to determine whether the compensation is genuinely 'sufficient', or, more generally, what constitutes sufficient compensation, and whether this can be sustained without invoking the notion of rights. Clearly, such a determination is not possible without some clear ideas about the type of giving and taking actually taking place between common land and private land dwellers. On all these counts a discussion of the basic issues concerning compensation is necessary.

As we have seen, the relationship of Indian law to the common law tradition has been superficial. Hence any appeal to the American Fifth Amendment or other Continental and European laws has no justification. American law has sought numerous ways—beyond the laws conferring power for land acquisition—to realize due compensations. In that country, for example, public and private services are fully liable in tort for compensation, and various insurance schemes exist for the adjustment of financial dues. In the UK the laws of compensations make liabilities fully justiciable in accordance with market values. The situation in India is totally different, due partly to the continuation of colonial and neo-colonial laws and partly to misunderstood and misguided socialist ideologies which have aimed more at making the rich poor than the poor rich.

Following *Kameshwar Singh*, *Keshavananda Bharti*, the Fourty-fourth Amendment and other related legislations, the right to property and due compensation has been obliterated from Indian laws. But all properties are not similar, nor is everyone equally undeserving of compensation. Indian society is both socially and economically stratified. In putting forests, pastures and village commons with estates, jagirs and *inam* or *muafi* lands, Indian law is blind to this fact. While the occupants of the second type of land are amongst the rich, those of the former are amongst the poorest. The laws concerning compensation should not, therefore, apply in the same manner to both categories of people. Whereas the first group is deserving of due compensation and of a proper re-distribution of wealth, the latter group has both in excess.

It must be recalled that *Minerva Mills* held laws which implement Article 39(b) and (c), directing the state to bring about 'just distribution of common resources', as valid. If the laws concerning compensation fail in this respect they are clearly violative of these provisions of the Directive Principles. No theory of socialism can deny due compensation to the poor on the grounds that it is denied the rich. Clearly, Indian court judgments and legislations concerning compensation have either ignored or not understood the complications for compensation due to the poor. Such basic confusions in law cannot be the grounds for true socialism.

In recent times some socially motivated non-government organizations and jurists have attempted to seek compensation for the ousted—as in the Dehra Dun mining case, the Tehri Dam and

Narmada Valley projects—on the grounds of the violation of human rights.[68] The right to life, in such cases, is advocated as the right to life-style, as one which extends a person's rights to his habitat. Although litigation on these new grounds is praiseworthy in so far as it seeks to exploit contradictions inherent in Indian law to attain quick justice, this is not the best alternative in the long run; such expediency has its own price. This is because, first, by invoking the notion of human rights in ever broadening senses the very concept is endangered. An extreme generality would make the concept as difficult in application as an extreme narrowness. Second, its application to specific cases draws attention to the violation of basic human conditions and their consequent *effects* but diverts it from the shortcomings of pre-existing laws which have been the *cause* of such effects; therefore it does not generate the basic jurisprudential principles which can lead to the amendment of bad pre-existing laws. Strategy-wise the best legal approach would be to challenge the laws concerning compensation—and land and forest laws in general—so that appropriate compensation is granted on the grounds of the *ultra vires* and irrational nature of such laws rather than on the grounds of a violation of human rights. Such an approach would not be case-specific but would lead to amendments that would be applicable to numerous similar cases in the future.

Since Indian society is economically stratified and since there is a vast disparity in wealth and availability of resources between those domiciled on private land and those on common land, a rational way to amend the compensation laws is to apply it differentially in order that the economically better-off receive less and the worst-off receive the most. True socialism, which is in accordance with Article 39(b) and (c) of the Indian Constitution, necessarily demands this revision. Evidently, there are limits to this approach; it cannot be extended to apply to all types of rights. But the right to property, especially that which is inherited and not acquired through one's own labour (and more specifically the right to compensation for land), is certainly befitting of such a criterion.

I do not intend to present the arguments for public purpose and compensation as intuitive insights. These have their basis in more general principles of justice; I turn now to discuss the justification for these suggested principles.

X. The Basis for Equality

When land, forests or resources are acquired by the state there is an inevitable redistribution of wealth. What sort of redistribution results in equity? In other words, in accord with what principle of justice must the laws affecting the partition of wealth be legislated so that the net result is a just distribution of wealth and its consequent benefits? The most ancient and basic principle is: give every person his due. This is a general form of the principle of justice for it leaves open the question: what is due to each person? An answer to this is provided in Rawls's two principles of justice, which give a content (material) to the general form. Rawls's principles are not the only material interpretations; there are alternatives. But for our purpose here—which is to discuss the application of the principles of justice and not the principles themselves—I shall apply the Rawlsian principles to the concrete context. This is possible because the Rawlsian principles, being semantic interpretations of the formal criterion of justice, stand on their own feet, i.e. they are intelligible independently of Rawls's account of liberalism and its justification. The same principles could be advocated through alternative theories.

In the 'original situation', Rawls tells us, i.e. in the situation in which the agents do not know their social position, aptitudes and ideals exactly but are motivated to attain them, justice as fairness demands acting in accordance with two basic principles:

> 1. Each person is to have an equal right to the most exhaustive total system of equal basic liberties compatible wth a similar liberty for all.
>
> 2. Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just saving principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.[69]

Rawls calls the situation in which the agents do not have such knowledge a 'veil of ignorance'. Let us see how these principles apply to concrete situations.

As noted earlier, the civil liberties of common property dwellers are curtailed in many more ways than those of private property dwellers. The Forest Act clearly does not give them 'equal basic liberties compatible with a similar liberty for all'. Hence from this point of view the Forest Act is violative of this principle of justice.

Second, the economic benefits arising from common property resources are clearly not arranged to be of greatest benefit to the least advantaged, namely those domiciled on such land; quite the contrary. Hence, from the point of view of this principle too, Indian laws are unjust. Forest dwellers have been under a 'veil of ignorance' concerning their rights and titles in common, as well as the commercial worth of resources, thereby making necessary a discussion of the notion of public interest in the context of this principle of justice.

If justice demands that inequalities be so arranged that they are of greatest benefit to the least advantaged, it follows that compensation—the denial of which creates the inequalities in the first place—cannot be oblivious to the degrees to which people are economically disadvantaged. Any theory of compensation must be based on a principle which takes the disparity in the original situation into account.

In the context of Indian law this implies that the Land and Forest Acts as well as Article 31A of the Constitution should not define 'public' in a general or abstract sense. The notion 'public' must be interpreted specifically in each case so that the people who are being deprived of land and its resources and the people who are to gain from such acquisitions are exactly denominated. The disadvantaged and advantaged groups can be identified in terms of their per capita income or in terms of their calorie intake per day. Other similar economic criteria could be employed. Social and historical factors would play a crucial part in such identifications. Here the jurisprudential criteria evolved for the purposes of affirmative action would be of direct relevance. The criteria on the basis of which the state and the law identifies people for affirmative action would also apply in cases of due compensation and the determination of the precise connotations of 'public'. Similar sociological and historical factors would form the basis on which the notion 'public' is to be interpreted. This amounts to no other than the identification of beneficiaries in each case of property acquisition by the state, such that the most advantaged and the least advantaged groups are clearly demarcated. This would be in accord with principles of distributive justice, such as those expounded by Rawls. The state is thus justified in exercising the power of eminent domain *only* when the resulting inequalities are to the greatest benefit of the least advantaged.

The Land and Forest Acts must not merely say that the state is empowered to acquire property for public purposes, it must also say that the state is so empowered only under two conditions: (a) minimally, when on account of such acquisitions the least advantaged do not become any poorer than in the original situation, prior to the acquisition; and (b) maximally, when the least advantaged group shares as much in the resulting benefits of acquisition as the more or most advantaged groups. It is only under such stipulations that the policy inherent in Article 39(b) and (c) of the Constitution can become effective as law.

The consequent necessary employment of a differential scale of compensation within this theory of justice entails invoking the criterion of merit or deserts. Even though American and English law does not invoke such a criterion in cases regarding acquisition of land, our law must. The exploitation of natural common resources in our country does not have a parallel in those countries, nor does the disparity in wealth created by such unequal distribution of the exploited resources. It would not be outlandish to invoke the criterion of deserts; Indian law concerning affirmative actions already invokes such a criterion, by which it has not only distinguished itself from American and English law but also pioneered this aspect of jurisprudence.

This is not to say that such a development is praiseworthy in its totality. I shall argue that the criterion of deserts is misguided when applied only in what the state gives (affirmative action) and not in what it takes (acquisition). But before I discuss this and relate it to the second part of Rawls's second principle, it will be necessary to explicate the points made so far about the first part of the second principle, namely that which concerns the benefits to the least advantaged. The points are best illustrated through concrete example.

The building of a dam, large or small, for irrigation and hydroelectric power is not merely a matter of harnessing natural energy or of transforming one form of energy into another, as physics would describe it. Socially it is a matter of redistributing the naturally available (transformed) energy from one group to another. From the point of view of justice, therefore, two questions arise: did the distribution of energy result in equality? And, second, was any group entitled to less or more of the benefits when the transformation took place? Let us examine the first question first.

As the situation stands in India, if the construction of a dam results in the submergence of common forest land, as invariably happens, dwellers are asked to vacate and some meagre compensation is given them in lieu. But here issues concerning compensation and the scientific worth of the project tend to submerge the central point about the just distribution of benefits. The river first flowed through the land of forest dwellers. It served their uses as well as existed as a common property resource. Its energy is then tapped and no longer available to forest dwellers. Thereby land as well as an energy resource is diverted inequitably to urban uses. Are those whose land is submerged likely to benefit equally from hydro-electric energy as urban dwellers whose land is unaffected? This is hardly ever likely in India. Therefore the redistribution of resources *furthers* an already existing inequality rather than reduces it.

Now for the second question. As I have shown, those domiciled on common land have a right to such land and its resources in common law, for they had customary rights to it earlier. Such individuals or groups, therefore, are entitled as compensation to whatever they are being deprived of, namely the use of energy resources as well as the land. In other words they have claim not only over their common land but also over whatever benefits arise from harnessing energy resources on their land, the benefits for which they have been ousted in the name of 'development' and 'public purpose'. The legal ramifications of this assertion lead to many issues; the point here is simply that when compensation is considered it must not extend merely to money but also to the benefits arising from such acquisition. Only this would satisfy the Rawlsian principle that inequalities must be arranged in order to be of greatest benefit to the least advantaged. In accordance with the minimal criterion suggested earlier the displaced dwellers must at least receive sufficient hydro-electric power for their needs since they have first claim to it. In accordance with the maximal criterion the compensation given to the ousted must include the real value of the land as well as an equitable share of the benefits arising from the development projects.

Rawls's first principle, which demands equal liberty for all, is a basic statement of liberal ideology. It is a demand for civil liberties and political rights. But Rawls's second principle concerns economic rights. Although Rawls does not tie up the realization of his

first principle with his second, the two are interrelated. The civil liberties of common land dwellers are curtailed so as to facilitate the acquisition of resources for the urban rich. The latter necessitates the former. Only in a non-exploitative situation, where inequalities are not created by the acquisition of resources, will it be possible to accept the freedoms (civil rights and liberties) of forest dwellers, enabling them to live like other Indians. Rawls, it must be kept in mind, did not apply his principles to a real historical situation, but in any empirical analysis the interdependence of civil liberties and economic rights is obvious. Indian jurists and legislators are misguided in championing liberal notions such as fundamental rights without demanding the economic conditions which bring about the realization of such rights.

Socialism has expressed itself in India not only in human rights litigation and compensation to erstwhile maharajas, but most emphatically in affirmative state action—which Marc Galanter calls 'reverse discrimination' and 'the greatest experiment by a democracy'.[70] This brings us to the second part of Rawls's second principle of justice, which pertains to the distribution of positions and offices and the equality of opportunities. Rawls tells us that social and economic inequalities must be arranged so that they are attached to offices and positions open to all people under conditions of fair equality of opportunity. Socialism's counterargument to this principle, which Indian jurists and legislators advocate in one way or another and which Galanter has analysed in depth, is that positions and offices should not be so arranged for the simple reason that in the original situation inequalities are such that the disadvantaged are rendered incapable of competing within such conditions of equality. More strongly, it has been argued that in reality such conditions just do not exist and have never existed. Hence it is necessary that the state intervene to create opportunities for the disadvantaged so that, some time in the future, conditions for fair equality of opportunity will exist. How much time is required for this? Indian legislators had assumed that about two decades of state intervention would suffice; later it was extended to three decades, and now the period is considered indefinite.

Progressive thinkers and activists in India—which include leaders of the scheduled castes and tribes such as Dr Ambedkar—have been greatly influenced by this counterargument against what they call the formal principle of justice, or formal and not substantive

equality. Now, sound as this argument may look and persuasive as it may be, it is not as simple as Indian jurists and legislators, including Marc Galanter, have assumed. The relationship between formal and substantive justice is far too complex to warrant the simple assumption that substantive justice can be achieved by reserving positions and offices and that we may continue to suspend formal equality.

If an agency is to help the socially and economically disadvantaged, the first question to ask is: which agency has made people poor? Must not one attack and eradicate the cause rather than seek to protect the effects of poverty? What if the agency which seeks to help the disadvantaged is itself the agent which has brought about the disadvantages? It has been made clear earlier that the forest dwellers of India became poor in the first place because the British destroyed their claims to customary occupancy rights and took away their resources, and because the Indian state has continued to do so. The argument for affirmative action evades this fact. It does not acknowledge squarely that tribals are now in need of affirmative state aid because this very state has robbed their livelihood and prosperity, giving these to other specific groups through the Forest Act, the Land Act and Acts connected with the control of natural resources. State paternalism is praiseworthy when the state is not responsible for the conditions demanding aid; else it is hypocritical and a mockery.[71]

There have been numerous commissions and committees on the reservation of seats and offices, the Mandal Commission being the latest in this line. Yet no commission has sat to unearth the roots, which pertain to the customary rights of tribals over land. In so far as rights to land are concerned the law defines 'adivasi' in such a way that it is impossible for any forest tribal to claim his rights; but on affirmative action the law is explicit in its definition of adivasi, and, as noted, uses a different criterion.

To evaluate the reasonableness of affirmative action legislation and judgments in India one must analyse not merely the argument for and against formal and substantive equality, as Marc Galanter does, but compare the rationality involved in such laws—which attempt to seek substantive equality—with the rationality embodied in the Forest and Land Acts—which cut away all grounds for such equality. We must thus ask if what has been given to the forest dwellers through affirmative state action is proportionate to

what has been taken away from them through the Forest Act. I shall not here discuss the data available on this issue since this work is not about the details of affirmative action but about peoples' rights over resources. The reader may, none the less, compare for himself the annual reports of the Commission for Scheduled Castes and Tribes of the Home Ministry with the annual reports of the Forest Department in order to learn the enormous difference between what is given and what is taken from tribals.

Such a comparison reveals that affirmative state action is less an aspect of socialism than a cover-up for the absence of it. In truth it is an anti-socialist measure which distracts attention from the rapid acquisition of forest resources. I have said this elsewhere[72] and been misunderstood either to argue for 'abstract' formal equality or to denigrate the ameliorative role of the state.[73] This is not so. I see a complex relationship between formal and substantive equality, such that the two are interdependent. Here I argue for substantive equality more than for formal equality because it seems clear that in evaluating the politics and legality of state intervention most people perceive only one side of the story—how the state helps the poor—and not how state intervention creates poverty. For a rational judgment of substantive equality these two types of state intervention have to be correctly evaluated.

But the more serious criticism of my argument—that affirmative state action for the amelioration of forest dwellers is nothing but a cover-up for illegal acquisition of resources, and hence that such people should refuse to accept state aid *en bloc*—is the view which suggests that I am not sympathetic to the conditions of such people. The falsehood of this should be apparent to anyone who sees the purpose of the present work. My assertion that Dr Ambedkar misunderstood what needs to be done for the amelioration of tribals when he asked for state aid and special reservations is not to suggest that his sympathies were not heartfelt, but only to suggest that they were misdirected. Forest dwellers would not need begging bowls if they knew what was theirs by right.

I must emphasize here that I do not suggest that only forest dwellers have rights to forest resources. The rest of India has such rights too since the forests belong to Indians in general. But there are some aspects from which the rights of forest dwellers override those of other people. Occupancy rights are a case in point. From

other perspectives rights must be equally shared—these must be *equitable* rights to benefits arising from natural resources. When rights are equitable the benefits of the forest will be shared amongst forest and non-forest dwellers.

I shall now briefly recapitulate the legal hurdles in the way of a realization of the rights of forest dwellers, and suggest ways of clearing these.

XI. The Way to Equality

Development without social and economic justice is just as bad as social and economic justice without development. One way to attain justice is through violent revolution; but this is a last social alternative, being economically the worst. A wiser way is to revolutionize law. This would entail legislating laws which bring about a just sharing of the benefits of development and repealing those which have been recognised as exploitative or contradictory to the aspirations of justice. It would also entail improving the legal system, especially the lower courts, so that the amended legislations are effective at the grass-root level.

The Indian Forest Act is in complete contradiction to Articles 39(b) and (c) of the Indian Constitution, which seeks equitable distribution and use of resources. So are the Land Acts in terms of compensation and the definition of public purposes. Legislators must hence repeal the Forest Act and create new laws instead of attempting to increase the power of forest administrators to stop the 'theft of wood', as they have done in the recent Bill. Indian legislators have herein failed to learn from history. In the 1820s Germany faced a similar problem, when industries exploited forests to the cost of local inhabitants, almost to the point where the forest cover went below the ecological subsistence level. The Prussian government then created stringent laws against the theft of wood by local inhabitants.[74] The resistance against such legislation was in part responsible for early Marxism.[75]

The greatest hurdle restricting jurists and judges is Article 31B. This makes laws in the Ninth Schedule immune from judicial review in terms of whether they are or are not in conformity with the Directive Principles. As noted, recently the Indian parliament once again hurriedly put a number of land laws into the Ninth

Schedule so that they become immune from review.[76] But this obstacle is only apparent. A discerning jurist should perceive that the authority of *Minerva Mills* gives the power to courts to review all those constitutional amendments which contradict the basic structure of the Constitution. In accordance with the authority of *Keshavananda Bharti,* Articles 39(b) and (c) have been recognized as part of such a basic structure. Hence a Parliamentary Act which allows laws contradicting the Indian Constitution's basic structure to be put into the Ninth Schedule is itself invalid.[77] The Ninth Schedule thus cannot protect laws which violate the Constitution's basic structure, e.g. those specified in the Constitution's Preamble which assert equality: social, political and *economic*. The Land and Forest Acts which disallow compensation to the poor—who can claim compensation on the basis of customary law and occupancy rights—are thus violative of the Preamble as well as of the Fundamental Rights and the Directive Principles. Fortunately the Forest Act has not been put into the Ninth Schedule so far, but if socially aware jurists do not act soon, this too will find its place in this Schedule. It must also be noted that, in accord with Article 13 of the Constitution, all laws in force before the commencement of the Constitution are void if they are inconsistent with the Fundamental Rights. This is an additional ground to repeal the Forest Act which is inconsistent with Articles 14 and 19. There are sufficient inconsistencies in our *corpus juris* to allow jurists to exploit interpretations for desired ends. There are, in addition, justifications arising from the common law tradition, natural rights theories and customary law. It is left to the ingenuity of jurists to utilize all these.

I shall conclude this discussion now with a brief review of a non-legal point, namely of what is in the national interest, since the utilization of forest resources is often so justified.

XII. National Interest

It is an open secret that state acquisition of private or common property in the national interest is merely a slogan for, inevitably, whenever such acquisitions take place the interest of some particular group, industry or individual is served. The question then is, whose interest must the state serve for national development? This

assumes that the state is free to serve the interest of anyone it chooses. However, we also know that the state is strongly influenced by economically powerful vested interests. The basic question, then, is: how must competing vested interests be so reconciled that even when they influence the state's decisions the resulting consequences maximize the welfare of those who have rights over resources and its benefits? Arguments in terms of national interest are bogus; the real question is one of finding solutions to conflicting vested claims so that the results *really* maximize the welfare of the nation. Second, arguments in terms of development *per se* are bogus; it is always an issue of development *for whom*. Development must thus proceed in such a way that the emerging welfare results in maximized distribution.

Both these assertions demand radical changes in neo-classical welfare economics. The most basic change required is within the notion of development which is based on the criterion of production and consumption. The change required is that equity must figure in the criterion. The measurement of development would then entail not merely whether production and consumption have increased but also how equitably this increase has been distributed. This is a larger task which experts in the Planning Commission must take note of before they do any further planning. An even more immediate task for economists is to seriously re-think and suggest alternatives to the pricing system for forest produce in such a way that the market in this sector becomes less lucrative. Only then will the pressure on forests from industries be relieved.

The pricing system can be sustained in the long run only if suitable or better substitutes for forest products are available and utilized. Hence a major part of our scientific research needs to be devoted to finding suitable alternatives to forest products. This is a matter of national science policy, an essential one if we are to save India's forests.

There are numerous other problems which need to be seriously taken note of in economic planning, for example those that pertain to forests as ecologically necessary regions for human well-being. All these point to the fact that our economic planning has been short-sighted. Proper planning must take an integrated approach, keeping long-term developmental consequences in mind. Our planners and policy-makers are shrouded in their own 'veil of ignorance' which prevents them from seeing long-term effects. At

a higher level we are all under a veil of ignorance concerning the manner in which the parts of the eco-system are interrelated and how they function. Any sound economic theory must suggest strategies which take precaution against this epistemic limitation. However, such epistemic limits are not our central concern here; these points require an independent discussion from the perspective of forest-resource planning. The arguments here are from the perspective of the people who live in these forests, for they are as much in need of protection as the forests. I hope this work stimulates efforts towards that end.

APPENDIX

Preamble to The Constitution of India

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Part III: Fundamental Rights

13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention [shall] be void.

Right to Equality

14. The State shall not deny to any person equality before the

law or the equal protection of the laws within the territory of India.

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.

(2) No citizen shall, on grounds only of religion, race caste, sex place of birth, or any of them, be subject to any disability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes or citizens or for the Scheduled Castes and the Scheduled Tribes.

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any

member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

31. [Compulsory acquisition of property] Rep. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 6 (w. e. f. 20–6–1979).

[Saving of Certain Laws]

31A. (1) Notwithstanding anything contained in Article 13, no law providing for—

(a) the acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [Article 14 or Article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article—

[(a) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, for pastures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [raiyat, under-raiyat] or other intermediary and any rights or privileges in respect of land revenue.]

31B. Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

31C. Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing [all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [Article 14 or Article 19]; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

Part IV: Directive Principles of State Policy

39. The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of

the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; .

Part IV A: Fundamental Duties

51A. It shall be the duty of every citizen of India—

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment, including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(i) to safeguard public property and to abjure violence. . .

Part XVI: Special Provisions Relating to Certain Classes

330. (1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes

(b) the Scheduled Tribes

(c) the Scheduled Tribes in the autonomous districts of Assam.

335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Fifth Schedule: [Article 244 (1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

Part A: General

5. *Law applicable to Scheduled Areas.*—(1) Notwithstanding anything in this Constitution, the Governor may by public notifica-

tion direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall be subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as moneylender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

Sixth Schedule: [Articles 244 (2) and 275 (1)]

Provisions as to the Administration of Tribal Areas in [the States of Assam and Meghalaya and in the Union territory of Mizoram]

3. *Powers of the District Councils and Regional Councils to make laws.*—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those whose are under the authority of Regional Councils,

if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town;

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [by the Government of the State concerned] in accordance with the law for the time being in force authorizing such acquisition;

(b) the management of any forest not being a reserved forest:

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of jhum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment of succession of Chiefs or Headmen;

(h) the inheritance of property;

(i) marriage and divorce;

(j) social customs.

(2) In this paragraph, a 'reserved forest' means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

U.P. Zamindari Abolition Land Reforms Act, 1950

Chapter IX: Adhivasis

231. *Rights of an adhivasi*—(1) Except as provided in Sections

233 and 234 and subject to his paying the rent, an adhivasi shall continue to have all the rights and the liabilities which he possessed, or was subject to in respect of the land on the date immediately preceding the date of vesting:

Provided that, notwithstanding anything contained in any contract or other engagement, the rent payable by the adhivasi shall not be varied except as permitted by this Act.

(2) When an adhivasi dies his interest in the holding shall, in the matter of devolution, be governed by the provisions contained in Sections 171 to 175.

1. Adhivasi—Section 20 defines the adhivasi. This chapter deals with the rights and liabilities of the adhivasi.

2. *'Except as provided in Sections 233 and 234'*.—The object of the exception is to ensure that the adhivasi shall continue in possession if he goes on paying rent. Sections 233 and 234 are conditions attached to the payment of rent and provide for ejectment under certain conditions. Section 233 lays down a provision for fixation of rent where there is no agreement. Section 234 lays down conditions under which ejectment is ordered. After the enforcement of Section 240A this provision will be rendered nugatory.

20 *A tenant of sir, sub-tenant or an occupant to be an adhivasi.* [Every person who—

(a) on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of this Act—]

(i) except as provided in sub-clause (i) of clause (b), a tenant of sir [other than a tenant referred to in clause (ix) of Section 19 or in whose favour hereditary rights accrue in accordance with the provisions of Section 10], or

(ii) except as provided in [sub-clause (i) of clause (b)], a sub-tenant other than a sub-tenant referred to in proviso to sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or in sub-section (4) of Section 47 of the United Provinces Tenancy Act, 1939, of any land other than grove land,

(b) was recorded as occupant—

(i) of any land [other than grove land or land to which Section 16 applies or land referred to in the proviso to sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947] in the khasra or khatauni of 1356F. prepared under Sections 28 and 33

respectively of the U.P. Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under clause (e) of sub-section (1) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or

(ii) of any land to which Section 16 applies, in the [khasra or khatauni of 1356 Fasli prepared under Sections 28 and 33 respectively of] the United Provinces Land Revenue Act, 1901, but who was not in possession in the year 1359 F.—

shall, unless he has become a bhumidhar of the land under sub-section (2) of Section 18 or an asami under clause (h) of Section 21, be called adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

[The Indian] Forest Act, 1927 (Act XVI of 1927):

1. Short title and extent- (1) This Act may be called THE INDIAN FOREST ACT, 1927.

(2) It extends to the whole of India except the territories which immediately before the Ist November, 1956, were comprised in Part B States.

2. Interpretation clause. In this Act, unless there is anything repugnant in the subject or context—

(1) 'Cattle' includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, sheep, lambs, goats and kids;

(2) 'Forest-officer' means any person whom (***) the (State) Government or any officer empowered by (***) the (State) Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest Officer;

(3) 'Forest-Offence' means an offence punishable under this Act or under any rule made thereunder;

(4) 'Forest-produce' includes—

(a) the following whether found in, or brought from, a forest or not, that is to say— timber, charcoal, caoutchoue wood oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds (kuth) and myrobalans; and

(b) the following when found in, or brought from, a forest, that is to say—

(i) trees and leaves, flowers and fruits, and all other parts or produce, not hereinafter mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants.

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, all other parts of produce of animals, and

(iv) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils, and all products of mines of quarries.

3. *Power to reserve forests*: The (State) Government may constitute any forest-land or waste-land which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the government is entitled, a reserved forest in the manner hereinafter provided.

4. *Notification by State Government*: (1) wherever it has been decided to constitute any land, a reserved forest, the (State Government) shall issue a notification in the (Official Gazette)—

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called 'the Forest Settlement Officer') to inquire into and determine the existence, nature and extent of any comprised within such limits, or in or ever any forest-produce, and to deal with the same as provided in this Chapter.

5. *Bar of accrual of forest-rights:* After the issue of a notification under Section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the (Government) or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or any other purposes shall be made in such land except in accordance with such rules as may be made by the (State Government) in this behalf.

6. *Proclamation by Forest Settlement Officer*: When a notification has been issued under S.4, the Forest Settlement Officer shall publish in the local vernacular in every town and village in the

neighbourhood of the land comprised therein, a proclamation—

(a) specifying, as nearly as possible, the situation and limits of the proposed forests;

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. *Inquiry by Forest Settlement Officer*: The Forest Settlement Officer shall take down in writing all statements made under Section 6, and shall at some convenient place inquire into all claims duly preferred under that Section, and the existence of any rights mentioned in Section 4 or Section 5 and not claimed under Section 6 so far as the same may be ascertainable from the records with Government and the evidence of any persons likely to be acquainted with the same.

8. *Power of Forest Settlement Officer*: For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, that is to say—

(a) Power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

9. *Extinction of rights*: Rights in respect of which no claim has been preferred under Section 6 and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the notification under Section 20 is published, the person claiming them satisfies the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6.

11. *Power to acquire land over which right is claimed*: (1) In the case of a claim to a right in or over any land, other than a right-of-way or right of pasture, or a right produce or a water-course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

12. *Order on claims to rights of pasture or to forest-produce*: In

the case of a claim to rights of pasture or to forest produce, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

13. *Record to be made by Forest Settlement-Officer*: The Forest-Settlement Officer, when passing any order under Section 12, shall record, so far as may be practicable-

(a) the name, father's name, caste, residence and the occupation of the person claiming the rights, and

(b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. *Record where he admits claim*: If the Forest Settlement Officer admits in whole or in part any claim under Section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description to the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorized to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

15. *Exercise of rights admitted*: (1) After making such record the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

16. *Commutation of rights*: In case of the Forest Settlement Officer finds it impossible having due regard to the maintenance of the reserved forest to make such settlement under Section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the (State Government) may make in this behalf, commute off, or by the grant of land or in such other manner as he thinks fit.

17. *Appeal from order passed under Section 11, Section 12, Section 15 or Section 16*: Any person who has made a claim under this Act, or any Forest Officer or other person generally or specially empowered by the (State Government) in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer under S. 11, S. 12, S. 15 or Section

16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than of a Collector; as the (State Government) may by Notification in this (Official Gazette), appoint to hear appeals from such orders.

Provided that the (State Government) may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the (State Government) and, when the Forest Court has been established, all such appeals shall be presented to it.

18. *Appeal under Section 17*: (1) Every appeal under Section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement Officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be before an officer appointed under Section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the (State Government), be final.

19. *Pleaders*: The (State Government), or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf the Forest Settlement Officer, or the Appellate Officer or Court, in the course of any inquiry or appeal under this Act.

26. *Act prohibited in such Forests*: (1) Any person who

(a) makes any fresh clearing prohibited by Section 5, or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the (State Government) in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;

(c) kindles, keeps or carries any fire except at such seasons as the Forest-Officer may notify in this behalf;

(d) trespasses or pastures cattle, or permits cattle to trespass;

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) fells, girdles, lops, taps, or burns any tree or strips off the

bark or leaves from, or otherwise damages, the same;

(g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(h) clears or breaks up any land for cultivation or any other purposes;

(i) in contravention of any rules made in this behalf by the (State Government) hunts, shoots, fishes, poisons water or sets traps or snares; or

(j) in any area in which the Elephant's Preservation Act, 1879, is not in force, kills or catches elephants in contravention of any rules so made; shall be punishable with imprisonment for a term which, may extend to six months, or with fines which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting court may direct to be paid.

(2) Nothing in the section shall be deemed to prohibit—

(a) any act done by permission in writing of the Forest Officer, or under any rule made by the (State Government) or;

(b) the exercise of any right continued under clause (c) of the sub-section (2) of the Section 15, or created by grant or contract in writing made by or on behalf of the Government under Section 23

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the (State Government) may (notwithstanding that any penalty has been inflicted under this Section) direct that in such forests or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

33. *Penalties for acts in contravention of notification under Section 30 or of rules under Section 32*: (1) Any person who commits any of the following offences, namely—

(a) fells, girdles, lops, taps or burns any tree reserved under Section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under Section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-product;

(c) contrary to any prohibition under Section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(d) sets fire to such forest, or kindles a fire without taking all

reasonable precautions to prevent its spreading to any tree reserved under Section 30, whether standing, fallen or felled, or to any closed portion of such forest;

(e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(g) permits cattle to damage any such tree;

(h) infringes any rule made under Section 32; shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the (State Government) may, notwithstanding that any penalty has been inflicted under this Section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Of the Control over Forests and Lands Not Being the Property of Government

35. *Protection of forests for special purposes*: (1) The (State Government) may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land—

(a) the breaking up or clearing of land for cultivation;

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation;

37. *Expropriation of Forests in certain cases*: (1) In any case under this chapter in which the (State Government) considers that, in lieu of placing the forest or land under the control of a Forest Officer, the same should be acquired for public purposes, the (State Government) may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the (State Government) shall acquired such forest or land accordingly.

38F. *Penalty*: Any person who—

(i) breaks up or clears any land for cultivation or any other purpose, fires or clears any vegetation, girdles, taps, burns, lops, pollards, fells, cuts, saws, converts or removes or strips off the bark from any tree, in any forest in respect of which a notification under Section 38B or 38C for 38H has been issued, or does any of the aforesaid acts in contravention of the provisions contained in subsection (4) of Section 38H, or

(ii) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading, or

(iii) permits cattle to damage any such tree, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

42. *Penalty for breach of rules made under Section 41*: (1) The State Government may prescribe as penalties for the contravention thereof, imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

43. *Government and Forest Officers not liable for damage to forest-produce at depot:* The (Government) shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under Section 41, or while detained elsewhere, for the purposes of this Act; and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

51. *Power to make rules and prescribe penalties*: (1) The (State Government) may make rules to regulate the following matters, namely—

(a) the salving, collection and disposal of all timber mentioned in Section 45;

(b) the use and registration of boats used in salving and collecting timber;

(c) the amounts to be paid for salving, collecting, moving, storing or disposting of such timber; and

(d) the use and registration of hammers and other instruments to be used for making such timber.

(2) The (State Government) may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

52. *Seizure of Property liable to confiscation*: (1) When there is reason to believe that a forest offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-Officer or Police Officer.

(2) Every officer seizing any property under this Section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. *Power to release property seized under Section 52*: Any Forest-Officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under Section 52, may release the same on the execution by the owner there of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

54. *Procedure thereupon*: Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

55. *Forest produce, tools, etc. when liable to confiscation*: All timber or forest-produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

59. *Appeal from orders under Section 55, Section 56 or Section 57*: The Officer who made the seizure under Section 52, or any of

his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under Section 55, Section 56 or Section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

60. *Property when to vest in Government*: When an order for the confiscation of any property has been passed under Section 55 or Section 57, as the case may be, and the period limited by Section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such an order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all the incumbrances.

61. *Saving of Power to release Property seized*: Nothing herein before contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 52.

61A. *Summary eviction of persons convicted of certain offences*: (1) Where a Court convicts any person of an offence under clause (a), Clause (d) or Clause (h) of sub-Section (1) of Section 26 or Clause (c) or Clause (h) of Sub-Section(1) of Section 33, it may, when passing judgment, direct the eviction of such person from any land in respect of which the offence has been committed.

(2) Any Court of Appeal or revision may direct any order under sub-section (1) passed by a Court subordinate thereto to be stayed pending consideration by the former court, and may modify, alter or annul such order. U.P. Act of 23 of 1965. S. 14 (23.11.1965).

62. *Punishment for wrongful seizure*: Any Forest-Officer or Police-Officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

63. *Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks*: Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest Officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under authority of a Forest-Officer; or

(c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act, are applied, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

64. *Power to arrest without warrant*: (1) Any Forest-Officer, or Police-Officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists that he has committed any forest offence, with imprisonment for one month or upwards.

(2) Every Officer making an arrest under this Section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the Officer in charge of the nearest Police-station.

(3) Nothing in this Section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under Clause (c) of Section 30.

65. *Power to release on a bond a person arrested*: Any Forest-Officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of Section 64, may release such person on his executing a bond to appear, if and when so required before the Magistrate having jurisdiction in the case, or before the Officer in charge of the nearest Police-station.

66. *Power to prevent commission of offence*: Every Forest-Officer and Police-Officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest offence.

67. *Power to try Offences summarily*: The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the (State Government) may try summarily, under the Code of Criminal Procedure, 1898, any forest offence punishable with the imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

68. *Power to compound offences*: (1) The (State Government)

may, by notification in the Official Gazette, empower a Forest-Officer

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-Officer shall not be empowered under this Section unless he is a Forest-Officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under Clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

69. *Presumption that Forest-produce belongs to Government*: When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government, until the contrary is proved.

76. *Additional Powers to make rules*: The (State Government) may make rules—

(a) to prescribe and limit the powers and duties of any Forest-Officer under this Act;

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

Abbreviations

A.C.	Appeal Cases
A.I.R.	All India Reporter
A.L.R.	Australian Law Reporter
C.A.	Court of Appeal
Ct.Cl.	Court of Claims
D.L.R.	Dominion Law Reporter
F.L.R.	Federal Law Reporter
F.Supp.	Federal Supplement
L.R.	Law Reporter
Mad.	Madras
N.Z.L.R.	New Zealand Law Reporter
N.Z.P.C.C.	New Zealand Privy Council Cases
P.C.	Privy Council
S.A.	South Australia
S.C.	Supreme Court
S.C.R.	Supreme Court Reporter
U.P.	Uttar Pradesh
U.S.	United States
W.A.	Western Australia

Notes

1. See *The State of India's Environment: 1982: A Citizen's Report* (Centre for Science and Environment, New Delhi, 1982), 00.31–56; Chandi Prasad Bhatt, *Determination of the Hill People to save their forests* (Roopak Printers, Delhi, 1980); also, *Hugging the Himalayas: The Chipko Experience.* ed. Shishupal Kunwar (Dasholi Grama Swrajya Mandal, Gopeshwar, 1982).
2. *The State of India's Environment*, pp. 15–30.
3. N. D. Jayal (Adviser, Planning Commission), 'Destruction of Water Resources—The Most Critical Ecological crisis in East Asia', paper

presented at the 16th Technical Meeting of the International Union for Conservation of Nature and National Resources, in Madrid, Spain, 5–14 Nov. 1984.

4. See, for example, Ramchandra Guha, 'Forestry in Pre-British India', *Economic and Political Weekly*, vol. XVIII, nos. 44, 45 & 46 (1983), for a discussion from the peoples point of view. For a discussion from the forest point of view see *100 years of Indian Forestry: 1861–1961*, vol. II (Dehradun Forest Research Institute, 1982).
5. See E. P. Stebbing '*The Forests of India*', 3 vols. (London 1922–7), vol. I, p. 14ff. Also *The Culture and Civilization of Ancient India in Historical Outline* (London, 1965).
6. See, for example, D. Brandis, 'Memorandum on the Forest Legislation Proposed for British India (Other than the Presidencies of Madras and Bombay)' (Simla, 1875). Also his 'Memorandum to the Department of Revenue and Commerce': GO, no. 19/656–692, 23 June 1874 (Forest Research Institute Library); see also Baden-Powell and J. C. Macdonell, eds., 'Report on the Proceedings of the Conference of Forest Officers' held at Lahore, 2 & 3 January 1872 (Lahore, 1872).
7. See B. H. Baden-Powell, 'On the Defects of Existing Forest Law (Act VII of 1865) and Proposals for a New Forest Act', in B.H. Baden-Powell and J.S. Gamble, eds., 'Report of the Proceedings of the Forest Conference 1873–74' (Calcutta, 1874). Also, B.H. Baden-Powell. 'The Legal Position of "Forest Rights" ', in *Indian Forester*, 21 (1895).
8. D. Brandis, 'Memorandum on the Forest Legislation for British India', (Simla, 1875), p. 13.
9. E.P. Stebbing, *Forests of India* (Oxford, 1962), vol. IV, ch. 9; see also 'Indian Forests and the War', Government of India, Ministry of Agriculture, Delhi, 1948; Richard Tucker, 'Forest Management and Imperial Politics: Thana District Bombay, 1823–1887', *Indian Economic and Social History Review*, 16 (1979), pp. 273–300.
10. See H. H. Risky, *The People of India* (London, W. Thacker, 1915); Francis Buchanan, *A Journey from Madras through the countries of Mysore, Canara and Malabar*, 3 vols (London, T. Cadell and W. Davies, 1807); B.H. Baden-Powell, *The Origin and growth of village communities in India* (London, S. Sonnenschein, 1908).
11. Sections 4 to 16 of the Indian Forest Act, 1927, deal with rights, but only in so far as they are to be taken away. The legal sources or reasons for such rights are nowhere mentioned. Although the language of rights is retained, they pertain to only what the officer may grant; hence they are in fact privileges.
12. See, for example, William Ward, *Account of the Writings, Religion*

and Manners of the Hindoos (Serampore, 1811); D.P. Chattopadhyaya, *Lokayata* (Peoples' Publishing House, Delhi, 1959); also K.P. Jayaswal, *Hindu Polity* (Calcutta, 1924); and A. Ghosh, *The Land Acquisition Act* (1894; 6th edn, Eastern Law House, Calcutta, 1973), pp. 17–19.

13. E.P. Stebbing. vol. III, p. 620.
14. From the Indian Forest Statistics, 1939–40, 1944–5 (Forest Department, Delhi, 1949).
15. *Annual Administration Report cum Statistical Glimpses, 1972–73* (Forest Department, Bihar, 1974), p. 32; *Statistical Hand Book 1980* (Government of Bihar, Directorate of Statistics and Evaluation, 1980), p. 75.
16. A.I.R., 1982. S.C., 1126.
17. A.I.R., 1973, S.C., 1461.
18. A.I.R., 1983, S.C., 239.
19. A.I.R., 1983, S.C., 75.
20. *Law Commission of India, Tenth Report* (Ministry of Law, New Delhi, 1958), p.1.
21. *Report of the Land Acquisition Review Committee on Land Acquisition Act, 1894* (Department of Agriculture, 1970), p. 9(2.1).
22. A. Ghosh, *The Land Acquisition Act, 1894.*
23. V.G. Ramchandran, *The Law of Land Acquisition and compensation* (Eastern Book Company, Lucknow, 1979).
24. (1950), S.C.R., 869, 901; A.I.R., 1951, S.C., 41; The fact that the government has the power to acquire land for 'public purposes' was firmly laid down in *Bella-Banerjee*, A.I.R. 1954, S.C. 170. See also *Somwanti* v. *State of Punjab*, A.I.R. 1963, S.C. 151.
25. A.I.R. 1952, S.C., 252.
26. M.S.A. Rao (ed.), *Social Movements in India: Vol. II: Sectarian. Tribal and Women's Movements* (Manohar Book Service, New Delhi, 1979).
27. (1970). 17. F.L.R. 141 (S.C., Australia).
28. (1924), L.R. 51, Ind. App. 357; see also *Secretary of State of India.* v. *Kamachee Boye Sabha* (1859), 15 L.R. 9; and *Secretary of State of India* v. *Bai Rajbai* (1915), L.R. 42, Ind. App. 229.
29. Above, n. 28, at 227.
30. Above n. 27, at 244–5
31. (1955), 348 U.S. 272.
32. Above n. 27, at 213.
33. (1823) 8 Wheat; 543 (S.C.), U.S.A.
34. (1941), 314 U.S. 339.
35. (1974), 418 U.S. 661.
36. (1921), 2. A.C. at 407.

37. (1923), **216** U.S. 219.
38. (1941), **314** U.S. 339, at 345.
39. (1976), **418** F. Supp. 798.
40. Ibid., at **807**.
41. (1973), **34** D.L.R. (3d) (145; S.C.)
42. Ibid., at **200**, 218.
43. (1973), **42** D.L.R. (3d) 8.
44. (1980), **107** D.L.R. (3d) 513 (F.T.D.)
45. Ibid., at **513**, 541.
46. (1847) N.Z.P.C.C. 387 (S.C.).
47. Ibid., at **390**
48. (1901), N.Z.P.C.C. 371.
49. (1963), N.Z.L.R. 461 (C.A.).
50. Act No.**191** of 1976 (6th).
51. Act No. **20** of 1981 (S.A.).
52. Act No. **24** of 1972 (W.A.).
53. 25 U.S.C.S.S. 70; see (1946) Public Law 726.
54. Ibid., at **S.2**.
55. Above **n. 38**, at 345.
56. (1975), **513** F. 2d 1383, 41 A.L.R. Fed. 405, at 422.
57. (1966), **177** Ct. Cl. 184. See also *Upper Chehalis Tribe* **v.** *United States*; **140** Ct. Cl. 192, 1955 F. Supp. 226.
58. (1976) **490**. F. 2d 935 (Ct. Cl.).
59. (1835) 9 Peters 711. see also: *United States* v. *Seminole Indians* (1967) 180 Ct. Cl. 375.
60. (1959) **147** Ct. Cl. 315, 177 F. Supp. 452. See also *Worcester* **v.** *Georgia* (1832) 6 Pat. 515.
61. (1919) A.C. 211 (P.C.).
62. Ibid. at **233–4**.
63. See **Section 231**: U.P. Zamindari Abolition Act 1950.
64. (1915) L.R.–42 I.A. 444.
65. Quoted in *Hamabhai Framjee Petit.* Above n. 64. No reference.
66. A.I.R. **1952**, Mad. 75.
67. Report of the Land Acquisition Review Committe on Land Acquisition Act, **1894**. Government of India. 1970.00. 10–11. (2.8)
68. The cases, concerning compensations to the 'oustees' of the Narmada Valley project as well as the one concerning those affected in the Mussorie hills, are still pending for hearing at the Supreme Court. For some discussion pertaining to them, see Upendra Baxi, 'Emerging Legal Issues in the Agroecosystem', paper presented at Seminar on Ecological Crisis in India and Legislative Safeguards, India International Centre, New Delhi, 30 Dec. 1984.

69. John Rawls, *A Theory of Justice* (Oxford, Clarendon Press, 1972), p. 302.
70. Marc Galanter, *Competing Equalities* (Oxford University Press, Delhi, 1984).
71. Chhatrapati Singh, 'Ideological Roots of Legal Paternalism in India', in *Journal of the Indian Law Institute*, New Delhi, 24, 84, 1982.
72. Ibid.
73. See, for example, Brijendra P. Bhatnagar, 'The Ideological Roots of Legal Paternalism—A rejoinder', in *Journal of the Indian Law Institute*, 1.25. 1983.
74. 'The Law on the theft of woods', in *Rheinische Zeitung* 1873–1844, K. Mark, F. Engels, *Werke* (Berlin, 1956), vol. 1, pp. 113–16, 146f.
75. In 1859 Marx wrote: 'the proceedings of the Rhenish Parliament on theft of woods . . . provided one of the first occasions for occupying myself with economic questions'. See the Preface to the *Critique of Political Economy*, p. 1., *Werke*, vol. 13 pp. 7ff.
76. See *Times of India*, 26 August 1984.

Is economic planning and legislation sufficiently informed of the rights of the people for whom the plans and laws are made? By a study of welfare measures as well as common property legislation and jurisprudence, both in India and other countries, Singh demonstrates that common poverty and an endemic denial of rights are the actual results achieved by such plans and laws. Using the examples of progressive legislation and jurisprudence (with regard to aboriginals in Australia/New Zealand and Red Indians in the USA) as well as John Rawls's two principles of justice, Singh makes a forceful case for the rights of tribals, forest dwellers and the backward classes to common property resources. He also suggests the need for new kinds of planning, legislation and jurisprudence which take sufficient cognizance of such rights.

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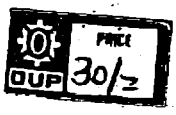

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